

DEBRA SMITH

March 22, 2011

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- )  
JOHN KOGUT, )  
                                Plaintiff, )  
                                vs. ) CV-06-6695  
THE COUNTY OF NASSAU, POLICE )  
COMMISSIONER DONALD KANE, )  
POLICE COMMISSIONER WILLIAM )  
J. WILLET (2005), POLICE )  
COMMISSIONER JAMES LAWRENCE, )  
DETECTIVE SEAN SPILLANE )  
(HEAD OF HOMICIDE 1985), )  
DETECTIVE DENNIS FARRELL )  
(HEAD OF HOMICIDE 2005), )  
DETECTIVE JOSEPH VOLPE, )  
DETECTIVE ROBERT DEMPSEY, )  
DETECTIVE ALBERT MARTINO, )  
DETECTIVE WANE BIRDSALL, )  
DETECTIVE MILTON G. GRUBER, )  
DETECTIVE CHARLES FRAAS, )  
DETECTIVE FRANK SIRIANNI, )  
DETECTIVE HARRY WALTMAN, )  
P.O., MICHAEL CONNAUGHTON, )  
P.O., WILLIAM DIEHL and )  
JOHN DOES 1-5, )  
                                Defendants. )  
----- )

(Caption continues on next page.)



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2 JOHN RESTIVO, DENNIS HALSTEAD, )  
3 MELISSA LULLO, JASON HALSTEAD, )  
4 HEATHER HALSTEAD and TAYLOR )  
5 HALSTEAD, )

6 Plaintiffs, )

7 vs. )

CV-06-6720

8 NASSAU COUNTY; JOSEPH VOLPE, )  
9 in his individual capacity; )  
10 ROBERT DEMPSEY, in his )  
11 individual capacity; FRANK )  
12 SIRIANNI, in his individual )  
13 capacity; MILTON GRUBER, in )  
14 his individual capacity; HARRY )  
15 WALTMAN, in his individual )  
16 capacity; ALBERT MARTINO, in )  
17 his individual capacity; )  
18 CHARLIE FRAAS, in his )  
19 individual capacity; )  
20 THOMAS ALLEN, in his )  
21 individual capacity; RICHARD )  
22 BRUSA, in his individual )  
23 capacity; VINCENT DONNELLY, )  
24 in his individual capacity; )  
25 MICHAEL CONNAUGHTON, in his )  
individual capacity; WAYNE )  
BIRDSALL, in his individual )  
capacity; WILLIAM DIEHL, in )  
his individual capacity; )  
JACK SHARKEY, in his )  
individual capacity; DANIEL )  
PERRINO, in his individual )  
capacity; ANTHONY KOZIER, in )  
his individual capacity; )  
DETECTIVE SERGEANT CAMPBELL )  
(SHIELD #48), in his )  
individual capacity; SEAN )  
SPILLANE, in his individual )  
capacity; and RICHARD ROE )  
SUPERVISORS #1-10, in his )  
individual capacity. )

Defendants. )

----- )



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1  
2 DEPOSITION in the above-entitled matter,  
3 held at the offices of Grandinette & Serio  
4 LLP, 114 Old Country Road, Mineola, New York,  
5 before Helga Christiane Lavan, a Notary Public  
6 of the State of New York.

7  
8 March 22, 2011  
9 114 Old Country Road  
10 Mineola, New York  
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A P P E A R A N C E S:

GRANDINETTE & SERIO, LLP  
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114 Old Country Road  
Mineola, New York 11501

BY: ANTHONY GRANDINETTE, ESQ.

NEUFELD, SCHECK & BRUSTIN, LLP  
Attorneys for Plaintiffs-John Restivo, Dennis  
Halstead, Melissa Lullo, Jason Halstead,  
Heather Halstead and Taylor Halstead  
99 Hudson Street  
New York, New York 10013

BY: DEBORAH CORNWALL, ESQ.

LORNA B. GOODMAN  
Nassau County Attorney  
One West Street  
Mineola, New York 11501

BY: MICHAEL J. FERGUSON, ESQ.  
Deputy County Attorney

ALSO PRESENT:

LOUIS FREEMAN, ESQ., Deputy County Attorney

NADJIA LIMANI, Esq.



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Smith  
(Whereupon, Exhibits 263 and 264 were  
marked for identification.)  
Whereupon,  
DEBRA SMITH,  
after having been first duly sworn, was  
examined and testified as follows:  
EXAMINATION BY  
MS. CORNWALL:  
Q. Good morning, Ms. Smith.  
A. Good morning.  
Q. Have you ever had your testimony  
taken before in a deposition like this, in a  
room where you had a court reporter and people  
asking you questions?  
A. Yes.  
Q. You have. When was that?  
Approximately.  
A. About a month ago.  
Q. Oh, it was. And were you a party in  
a lawsuit?  
A. Yes.  
Q. Was it a civil lawsuit? Was someone  
asking for money?  
A. Yes.



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Q. And were you the party seeking money?

A. Yes.

Q. What was the nature of that lawsuit that you were giving testimony about?

A. I had -- it was a slip and fall at 711 and they hadn't had any marking on the part where I fell and I hurt myself.

Q. And did you give testimony under oath in that action?

A. I did.

Q. Other than the slip and fall lawsuit where you gave testimony about a month ago, have you ever done a deposition before?

A. No.

Q. So you've done it once before. But I'll just explain again for you briefly how it works here. Okay?

I'll be asking you some questions. I represent the plaintiffs in this lawsuit who are John Restivo and Dennis Halstead in a lawsuit against Nassau County and some of its police officers in connection with their wrongful conviction for a crime they didn't commit. The attorneys at the other side of



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1 Smith  
2 the table, one of whom I think you've met,  
3 Michael Ferguson from county attorney's  
4 office.

5 A. Yes.

6 Q. Nadjia Limani and Lou Freeman are  
7 outside lawyers who the county also hired to  
8 defend the county in the lawsuit. Okay?

9 So I will be asking questions first.  
10 If you don't understand my question, please  
11 just let me know. If you have questions, feel  
12 free to ask them. If you want to take a break  
13 at any point, feel free. Just let us know.

14 The court reporter, as you can see,  
15 is going to be writing down everything that is  
16 said so that we have it in writing later on.  
17 When I'm finished asking questions, one of the  
18 lawyers on the other side will have a chance  
19 to ask questions as well. All right? When  
20 you're asked a question can you answer  
21 verbally in a "yes" or "no" or whatever your  
22 answer is, just so the court reporter can  
23 write it down.

24 A. Okay.

25 Q. Because she can't write down nods or



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1 Smith

2 shakes of the head.

3 A. Right.

4 Q. Okay.

5 From time to time you might hear one  
6 of the lawyers say "objection." Because  
7 there's no judge here to make a ruling on an  
8 objection, you can go ahead and answer and  
9 that objection will be ruled upon at some  
10 later time. All right?

11 Any other questions about the process  
12 before we start?

13 A. No.

14 Q. Your full name again, please?

15 A. Debra Smith.

16 Q. You said you're D-E-B-R-A, Debra?

17 A. Yes.

18 Q. And you live in what town?

19 A. East Meadow.

20 Q. Do you live with anyone else?

21 A. No.

22 Q. Where did you go to school?

23 A. East Meadow High School; Nassau  
24 Community College; Upstate Medical Center;  
25 Hofstra University; Adelphi University.



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Q. Okay. I'm going to ask you to answer a little bit more slowly so I can get some more detail about each of those.

Did you graduate from East Meadow High School?

A. Yes, I did.

Q. When was that?

A. 1974.

Q. And after that where did you go?

A. Nassau Community College.

Q. How long were you there?

A. Two years.

Q. Did you receive a degree?

A. Yes. Associate of science.

Q. What discipline of science?

A. Pre-physical therapy.

Q. After Nassau County Community College where you got your associates, where did you go next?

A. Upstate Medical Center.

Q. What did you study there?

A. Physical therapy.

Q. Did you receive a degree?

A. No. I withdrew after my first



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semester.

Q. Why did you withdraw?

A. I thought I was pregnant.

Q. You mentioned one other institution after Upstate Medical?

A. I went back to Nassau Community College.

Q. What did you study there?

A. I got a certificate of data processing.

Q. Do you recall what year that was?

A. That was 1979. One full year. 1979 until August of '80.

Q. So you got your certificate around August of 1980?

A. Right.

Q. Then after Nassau County Community College, where did you study next?

A. Hofstra University.

Q. What did you study at Hofstra?

A. Computer science.

Q. Was that a bachelors degree program?

A. Yes.

Q. Did you complete your bachelors?



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A. Yes.

Q. When did you get your degree?

A. August 1983.

Q. Once you graduated with your bachelors in computer science from Hofstra in August of '83, did you work?

A. Yes.

Q. What was your first job?

A. I worked --

Q. After you graduated from college.

A. American Technical Ceramics.

Q. What did you do for American Technical Ceramics?

A. Computer programmer and systems analyst.

Q. How long did you work there?

A. One year. From approximately May of '84 to May of '85.

Q. Was that a Monday-through-Friday job?

A. Monday through Friday, 8 to 4 or 9 to 5. No. 8 to 4, 8 to 5.

Q. You didn't work on the weekends, though, when you worked that job?

A. Oh, yes, I did.



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Q. You did?

A. I worked at nights cleaning houses and boats. And I had one other job and I don't remember what it was, whether it was the restaurant or taxi driver.

Q. At some point in 1984 and '85 you worked as a taxi driver?

A. I'm not sure when it was. I started around '78, '79 and worked until about '82. But I know I had, like, three jobs at that time.

Q. Who did you drive taxis for?

A. Lynbrook.

Q. Lynbrook Cab?

A. Lynbrook Taxi.

Q. And you mentioned one other thing other than cleaning. Taxi driving and a restaurant, I think you said?

A. At that time period I worked part-time at a restaurant, a diner.

Q. Where was the diner?

A. In East Meadow.

Q. What did you do for them?

A. Waitress.



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Q. Were you, to the best of your memory, waitressing in the evenings in 1984 and '85?

A. Evenings -- I think it was weekends. It might have been slightly before that time period. I don't remember exactly. I know I had three jobs.

Q. What was the name of the diner, if you remember?

A. Apollo.

Q. After you left American Tech Ceramics, what was the next full-time job that you had after May of '85?

A. Well, at that point I went to Europe for about two months. So I was in Europe for two months. From June 2nd of 1985 to around July 23th or 25th of '85.

Q. And did you get a job when you returned back to the states?

A. Yeah. But I'm having trouble remembering what job it was. I don't remember. Because I don't think I worked it that long. I forgot the name -- it was in New York. I forgot the name of the place.

Q. Okay. Why don't we fast forward to



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1 Smith

2 are you working now?

3 A. No. I'm not.

4 Q. How long has it been since you've had  
5 a job?

6 A. 2001.

7 Q. What job did you have up to 2001?

8 A. I was a Cisco engineer, teacher's  
9 assistant.

10 Q. Cisco?

11 A. Yes. C-I-S-C-O.

12 Q. For the company Cisco?

13 A. Yes. They make routers and switches  
14 and all that.

15 Q. And then you were also a teacher's  
16 assistant?

17 A. Yes.

18 Q. Was that a separate job from the  
19 Cisco job?

20 A. No. That's a type of engineer you  
21 are. That's the type of router, type of  
22 switch. Cisco.

23 Q. How long did you work for Cisco?

24 A. No, I didn't work for Cisco. I  
25 worked for Computer Career Center.



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Q. Thank you. As a teacher's assistant?

A. Right.

Q. For the Cisco type of router?

A. Right.

Q. Okay. Thank you. I got it.

So how long did you work for the  
Computer Career Center before you stopped in  
2001?

A. About a year -- about 14 months.  
From June of 2000 to August of 2001.

Q. And generally over the period between  
1985 and 2000, did you work and have jobs?

A. Not after -- when I had my first  
child, that was 1989. So from -- when I got  
pregnant, from that time period, '89 to  
present, I've mostly been a full-time mother.  
I have three children.

Q. How old are your kids?

A. 21, 19, 13.

Q. Did you have any full-time work after  
you had your first kid?

A. No.

Q. Let's go back and talk about November  
and December of 1984 for a moment. Okay?



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A. Okay.

Q. In December of 1984, do you recall contacting the Nassau County Police Department's homicide unit?

A. Yes, I do.

Q. How old were you approximately when you made that call?

A. So I would be 28.

Q. And at that time where did you live?

A. East Meadow.

Q. Were you in the same house that you live in now?

A. No. That's my father's home in East Meadow.

Q. Where you lived back then?

A. Right.

Q. Okay. Were you living with family then?

A. Yes.

Q. Who specifically in your family were you living with back when you made that call to the police?

A. You know, I forget when some of the sisters and brothers moved out. But I have



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1 Smith  
2 five sisters and brothers. So it would have  
3 been a few of the sisters and brothers.

4 Q. Were your parents alive and living  
5 there?

6 A. Yes.

7 Q. When, at the age of about 28, you  
8 called Nassau County police in December of  
9 '84, were you at that point working at  
10 American Technical Ceramics?

11 A. Yes, I was.

12 Q. Was that at 15 Stepar Place?

13 A. 15 Stepar Place, Huntington Station.

14 Q. Take a look, if you would. I'm going  
15 to show you a couple of documents to establish  
16 the timeline and then I'll ask you some more  
17 questions.

18 I'm showing you what was marked  
19 Exhibit 168, a missing poster for Theresa  
20 Fusco. Also showing you what I've marked  
21 today -- and I've given counsel a copy of --  
22 Exhibit 263, which is a newspaper article with  
23 the headline "Missing Teen Girl's Nude Body  
24 Found in Long Island Woods."

25 Do you see the date on the top of



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that article of the New York Post story?

A. It says Friday, December 7th.

Q. Of what year?

A. 1984.

Q. Do you see the caption under the photograph? Could you read that to us?

A. "Pretty murder victim Theresa Fusco, 16, with friend recently."

Q. Okay. Thank you.

So Theresa Fusco had been missing and then her body was found soon before December 7th of 1984 as reflected in this article. Do you have that timing?

MR. FREEMAN: Objection to the form of the question.

Q. Do you have that timing in mind?

A. I never knew anything about Theresa Fusco, the crime, the guys who were convicted. I never knew anything about it. All I knew is the call I made and the identification of a car.

Q. Okay. And I'm going to ask you some questions about that.

A. And when I look at the statement, I



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Smith

see my timeline is different.

Q. Okay. We're going to ask you some questions about that.

First of all, I see you looking at Mr. Ferguson who has a lovely smile on his face. You've met him before?

A. Yes.

Q. When did you meet with Mr. Ferguson?

A. I met with Mr. Ferguson, oh, about a month ago or so.

Q. Where was the meeting?

A. My apartment.

Q. How was the meeting set up?

A. I called him to ask him about this deposition. Because I had questions that I didn't think I could be of any help and why was I being subpoenaed.

Q. How did you find his phone number?

A. I had trouble. I called the District Attorney's office in, I guess it's Mineola there, at the D.A.'s office, and they told me there was no Mr. Ferguson there. And then they must have thought about the County Attorney's office and called them over there



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1 Smith  
2 and that's how we got together.

3 And then I saw him one other time. I  
4 was in Pilgrim State Hospital for psychiatric  
5 care and he came to talk to me.

6 Q. When did he come to talk to you when  
7 you were in the hospital?

8 A. I don't remember exactly even what  
9 year that was. What was it? About 2008? I'm  
10 not sure. You would have to ask Mr. Ferguson.

11 Q. How did he -- withdrawn.

12 How did he come to visit you in the  
13 Pilgrim State Hospital?

14 A. He told me he wanted to ask me some  
15 questions about a statement I made to the  
16 police about Theresa Fusco.

17 Q. So he contacted you while you were in  
18 Pilgrim State Hospital?

19 A. Yes.

20 Q. At that point, you hadn't made a call  
21 to him before he contacted you?

22 A. No. I don't believe so.

23 Q. Were you surprised to be getting a  
24 phone call from a county attorney while you  
25 were in the Pilgrim State Hospital?



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A. No. I just assumed they had some questions for the questions. I had been called by the police to identify the car. I figured maybe something about the car panned out or didn't pan out. I don't know. So they had questions.

Q. When you say you were called by the police about the car and to identify the car, when was that?

A. That was back in '84.

Q. After 1984, since 1984, has any Nassau County police official ever contacted you again about the car or your statement?

A. Not that I can remember.

Q. Let's talk about the meeting you had with Mr. Ferguson when you were in Pilgrim State Hospital. You mentioned you think it might have been 2008? Can you be any more specific?

A. You know, I could actually get a record and see when I was there and then I could give you the information. But off the top of my head, no.

Q. What's your best memory of when you



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1 Smith

2 were there?

3 A. Must have been around 2008 or 2009.

4 Q. How long were you there?

5 A. A couple of months.

6 Q. May I ask why?

7 A. I have a bipolar disorder and I had  
8 a -- I guess they thought I was symptomatic.

9 Q. Before you went into Pilgrim State  
10 Hospital, had you been medicated for your  
11 bipolar disorder?

12 A. I seldomly (sic) took the medication  
13 as it makes you very fat. As I'm medicated  
14 now on it which makes you --

15 Q. Toxic?

16 A. Very. And it's very hard to deal  
17 with. Usually the way I am now, pretty lucid  
18 and clear, maybe I get a little hyper. But I  
19 didn't think it was a felony offense. So I  
20 prefer not to take the lithium. But now I  
21 have to give it a try because I've had too  
22 many hospitalizations. And I decided to give  
23 it a try and it's blown me up a hundred pounds  
24 over my normal weight. So it's a problem.

25 Q. That's tough.



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23

1 Smith

2 A. Yeah. It is.

3 Q. You had mentioned you had other  
4 hospitalizations. Were they other psychiatric  
5 hospitalizations?

6 A. Yes.

7 Q. When is the first time that you were  
8 hospitalized for your bipolar disorder?

9 A. Around '78, '79.

10 Q. As of '78, '79 had you yet been  
11 diagnosed with bipolar disorder?

12 A. That was the very first diagnosis.

13 Q. And where were you hospitalized then?

14 A. Nassau County Medical Center.

15 Q. For how long?

16 A. Then, it was only about usually 7  
17 days or 10 days.

18 Q. What's the next time you were  
19 hospitalized for the bipolar disorder?

20 A. I don't remember. I've had many.  
21 And that's why this time, no matter how fat I  
22 get, I'm giving it a try. No matter -- or  
23 toxic or lethargic, you get very lethargic.  
24 I'm giving it a try.

25 Q. Have you been diagnosed with any



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DEBRA SMITH

March 22, 2011

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Smith

other disorder other than bipolar disorder?

A. Sometimes they'll put in -- they'll say bipolar, schizoaffective. They give it other names.

Q. When were you first diagnosed with schizoaffective disorder?

A. I couldn't begin to tell you. I couldn't even remember.

Q. Was it before 1984 or since then?

A. I don't know. Because I was always in the hospital for bipolar. And then when I was in Pilgrim, they had added schizoaffective to it. So I'm not sure if it had been there ever before or that was the first time.

Q. When is the first time you were hospitalized in Pilgrim State?

A. It was only that one time. 2008 or so, or thereabouts.

Q. And that's the first time you became aware --

A. Maybe 2009.

Q. And so when you were in Pilgrim State in 2008 or 2009, was that the first time you became aware that anyone had given you a



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1 Smith  
2 diagnosis of schizoaffective disorder other  
3 than your bipolar disorder?

4 A. Right.

5 Q. Had you ever been diagnosed with any  
6 other psychiatric condition?

7 A. I don't think so. I've been  
8 basically a true case of manic depression,  
9 which is bipolar.

10 Q. And other than lithium, have you  
11 taken any other medication for it?

12 A. I tried Depakote but that blew me up  
13 to even a fatter balloon, that I had to then  
14 lose a hundred pounds to get back in shape.

15 Q. When were you on the Depakote? Do  
16 you recall when you tried it?

17 A. I think it was Pilgrim.

18 Q. You mentioned you had had a number of  
19 hospitalizations for this condition?

20 A. Yes.

21 Q. Can you give me your best estimate?  
22 More than five hospitalizations?

23 A. Yes.

24 Q. More than ten hospitalizations?

25 A. I would say so. I would say about a



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DEBRA SMITH

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Smith

dozen.

Q. You mentioned the first one was 1978 or '79?

A. Yes.

Q. At Nassau County Medical Center?

A. Yes.

Q. What was the next time you were hospitalized after that?

A. Oh, you're asking me --

Q. I know.

A. I don't have a clue. I don't write these numbers down. I can't even remember a recent one like Pilgrim, which is 2008 or 2009.

Q. Let me ask you a different way to see if that helps.

A. It won't.

Q. Let's just see. Maybe it will, maybe it won't.

A. All right.

Q. Before you called the police in December of 1984, how many times had you been hospitalized?

A. Maybe about three.



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Q. And when you called the police in December of 1984, what was the most recent hospitalization?

A. I had a hospitalization May of '84. I know that because I did it right before I went to Europe. I came out of the hospital in ten days, packed and went to Europe.

Q. Where were you hospitalized in May of 1984?

A. Nassau County Medical Center.

Q. Did Mr. Ferguson tell you when he met with you at Pilgrim how he found out you were at Pilgrim?

A. No. I don't remember anything about that.

Q. Did you ask him how he found you?

A. No. I wasn't surprised at all. He's like a little detective himself. He's a lawyer. He can figure these mind things out.

Q. Yes, he can.

Was anyone with him when you met with him at Pilgrim State?

A. He was alone.

Q. And you mentioned -- withdrawn.



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1 Smith

2 How long did you meet with Michael  
3 Ferguson at Pilgrim State?

4 A. When you're in the hospital it's  
5 always nice to have a visitor. So to me, it  
6 seemed like a very short time. But maybe an  
7 hour? I don't know.

8 Q. Did he take any notes while you two  
9 were talking?

10 A. Yes.

11 Q. Did you sign anything for him?

12 A. No. I don't believe so.

13 Q. What did he ask you?

14 A. He asked me did I remember anything  
15 about Theresa Fusco. And then he had to  
16 remind me a few things about the situation,  
17 the year or whatever. And then I told him  
18 what I remembered.

19 Q. Did he show you anything?

20 A. No.

21 Q. For example, the Missing poster or  
22 this statement?

23 A. No.

24 Q. Nothing like that?

25 A. No. I don't believe so.



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Q. And then you mentioned you met with him a second time about a month ago after you received the subpoena for this deposition?

A. Shortly -- not a month after I received the subpoena. But a short duration after I received the subpoena.

Q. Thank you. And the meeting was about a month or so ago?

A. Right. I think so.

Q. And the meeting was at your house?

A. Yes.

Q. How long was that meeting?

A. An hour or two.

Q. Was anyone else with Mr. Ferguson?

A. No.

Q. At this meeting did he show you anything?

A. No.

Q. At this meeting did he ask you to sign anything?

A. No.

Q. So what did he say to you and what did you say to him during that hour or two?

A. Well, he was going over the history



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Smith

and I was telling him some of my wilder adventures, about my adventures in Europe, unusual things that had happened.

Q. Like what?

A. Oh, I would rather not say.

I ended up being in the Middle East by Afghanistan, by Iran, Iraq, Egypt, the Gaza Strip where the Palestinians are, that area. Israel, northern Africa. So I've been to all those different areas. And I talked about the adventures I got into, about how the ship I was on was the -- that ship that the summer of 1985 got hijacked, you know, the Jewish man got shot and then pushed overboard?

Q. The Achille Lauro?

A. Yeah.

Q. You were on the Achille Lauro?

A. Yeah.

Q. Must have been terrifying.

A. My buddy was one of the terrorists. He promised me that I was such a nice person that he wouldn't hurt me.

Q. And it worked out?

A. Yeah. I managed to get off the ship.



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Smith

Q. And this was in 1985?

A. Yeah.

Q. So your passport must be full of stamps.

A. You know, that passport I got in 1985 and it was full of stamps, everywhere, every European country, and in the Middle East. But, you know, I don't have my passport anymore because I lost it. When it had expired, I must have been careless with it. I don't have it.

Q. Did you send it in when you applied for a new one after it expired?

A. No. I never had a passport since that one in '85, that expired in '95. Because I was home with the kids. Where was I going to go with kids? I don't have money or wherewith all to go on a trip like that ever again. That was, like, once in a lifetime. Besides, I'm not such a brave traveler anymore. I'm kind of reticent. So I told him some of the stories like that.

Q. I understand.

Debbie, does the bipolar disorder



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1 Smith

2 have any impact on your ability to see?

3 A. No.

4 Q. Does your bipolar disorder have any  
5 impact on your ability to hear?

6 A. No.

7 Q. Does your bipolar disorder have any  
8 impact on your memory?

9 A. It might. If I'm very medicated.

10 Q. I'm asking right now. I will ask  
11 about the effects of your medication in a  
12 moment. Right now I'm just --

13 A. I don't think it has an effect on the  
14 memory.

15 Q. So now I would like to ask you the  
16 same questions for the lithium. But first,  
17 you've been taking lithium on and off since  
18 your first diagnosis?

19 A. Once I was out of the hospital, I  
20 never took it. I never took it because I  
21 didn't like how it blew me up like a balloon.  
22 My vanity. And also, I could function very  
23 well without it. And I found that on it, I  
24 couldn't function. Like, I was like a  
25 sluggish snail. Very sluggish.



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Smith

Q. So when you say after you got out of the hospital you didn't take it, starting when did you stop taking the lithium?

A. Every time -- this is the first time in my life that I have consistently taken it regardless of no matter how fat I got. I said, okay, I got to do it because I can't have another hospitalization. This is ridiculous.

I'm an educated person, smart, personable person. If I need this to level me off, then that's what I'm going to take. So this is the first time I've taken it consistently.

Q. So is it fair to say, then, that in November and December of 1984 -- withdrawn.

Is it fair to say, then, that in November and December of 1984 you were not taking lithium or any other medication?

A. I'm pretty sure that I wasn't.

Q. When you are taking lithium -- first of all, are you on lithium today?

A. Yes.

Q. Does the lithium have any impact on



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Smith

your ability to understand my questions?

A. No.

Q. Any impact on your ability to give truthful testimony?

A. I believe not.

Q. Any impact at all, the lithium has, on your ability to remember?

A. No. I don't think so.

Q. So is it fair to say that only during the periods when you were heavily medicated, those would be the only times when there might have been an impact of the medication on your ability to remember?

A. Possibly. Yes. Yes. Possibly.

Q. Other than lithium, are you on any other medication today?

A. Risperdal.

Q. What is Risperdal?

A. It's an antipsychotic, I believe. I think. I think so.

Q. When were you first prescribed Risperdal?

A. In the hospital.

Q. And when you say in the hospital, are



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Smith

you referring to Pilgrim State?

A. No. Long Beach -- I went to Long Beach for a different doctor, better doctor. And Nassau County Medical Center was too full. So I went to Long Beach Medical Center.

Q. What year was that? Approximately.

A. That would be 2010.

Q. So within the last year was the first time that you were prescribed Risperdal?

A. Yes.

Q. And what was the condition that you're diagnosed with that warrants the Risperdal?

A. That's -- I think it's also another mood stabilizer. Just to -- because I'm not prone to -- I'm not prone to psychotic hallucinations or delusions. So I would say it's mostly as to balance -- to work in conjunction with a mood stabilizer.

Q. So are you taking a separate mood stabilizer other than the Risperdal?

A. No. That would be it. Lithium and Risperdal.

Q. Those are the only two medications



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1 Smith

2 you currently take?

3 A. I take a side-effect -- one medicine,  
4 like Cogentin for side effects.

5 Q. What are the side effects the  
6 Cogentin helps with?

7 A. Shaking hands, muscle rigidity. And  
8 that's about it.

9 Q. You mentioned that you're not prone  
10 to hallucinations or delusions?

11 A. No I'm not.

12 Q. When you say you're not prone, have  
13 you ever been hospitalized for -- or  
14 presenting with symptoms of hallucinations or  
15 delusions?

16 A. No. No.

17 Q. To the best of your memory had you  
18 ever experienced a hallucination or a  
19 delusion?

20 A. No.

21 Q. Other than the lithium and the  
22 Risperdal, which you started taking around  
23 2010 after hospitalization in Long Beach?

24 A. Which I'm being weaned off of right  
25 now, by the way. As a matter of fact, I have



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Smith

an appointment in two weeks. And he's got me down to only two milligrams. It's a very small amount.

Q. And other than the Cogentin, have you ever been prescribed any other medication for any psychiatric condition?

A. Ever?

Q. Ever.

A. Oh, I'm sure. I'm sure I must have. I just don't remember what they are at this point in time. Depakote. Did I tell you Depakote?

Q. You did mention the Depakote. And remind me when you were prescribed the Depakote?

A. Pilgrim State.

Q. That was the first time you were prescribed Depakote?

A. No. I think I had been prescribed it before. I'm not sure. Might have been. I don't remember. A lot of these medicines are so inconsequential to me that I just take them or I wean myself off of it as soon as I'm out of the hospital and don't take it because it



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 has an adverse effect on my physical being.

3 Q. Who is your primary psychiatric  
4 doctor now?

5 A. Dr. Bhatt, B-H-A-T-T.

6 Q. Where is Dr. Bhatt?

7 A. Long Beach Medical Center.

8 Q. Did Mr. Ferguson ask you similar  
9 kinds of questions about your history with  
10 bipolar disorder and medication?

11 A. Yes. I believe he did. Not the  
12 exact ones you asked, though. But some  
13 similar. You know, we touched on the vein of  
14 it.

15 Q. Let's turn back to December of 1984.  
16 So I've shown you the missing poster and the  
17 December 7, 1984 article reporting that Theresa  
18 Fusco's body had been found.

19 A. When did I make this statement?

20 Q. Let's take a look at your statement  
21 which is Exhibit 159. And before -- well,  
22 what's the date on the top right of the first  
23 page?

24 A. December 9, 1984.

25 Q. Did you have an opportunity to read



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March 22, 2011

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1 Smith  
2 through this document before we started the  
3 deposition today?

4 A. Yes, I did.

5 Q. Take a look at the bottom of the  
6 first page. There's a signature there. Do  
7 you recognize that?

8 A. Yes. That's my signature.

9 Q. Please turn to the bottom of the  
10 second page. Do you recognize that signature  
11 on the right?

12 A. Yes. That's my signature.

13 Q. And at the bottom of the last page,  
14 do you recognize the signature on the  
15 right-hand side?

16 A. Yes. That's mine.

17 Q. Let's read through this together and  
18 I'm going to ask some questions about it.

19 Now, first of all, as you sit here  
20 right now, do you remember giving this  
21 statement on December 9th of 1984?

22 A. I don't remember. I don't. I mean,  
23 when I read it, everything in there is true  
24 about the things. And now I do remember, kind  
25 of remember it. But before I read it or Mary



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March 22, 2011

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Smith

told me it existed, I didn't remember it.

Q. Do you recall who you spoke to at the police department on December 9th of 1984?

A. Oh, no. I don't remember at all. I just called the number on that poster was on the telephone pole in Lynbrook and I called it.

Q. When you say "that poster," are you referring to Exhibit 168, the Missing poster for Theresa Fusco?

A. Right. I saw this and I thought about it and I said: I did hear a scream that night. What's the chance? But let me just give a call and see. So I gave the call.

Q. And that very same day they asked you to come in to the police department, didn't they?

A. I don't remember.

Q. Did there come a time when you went to the police department?

A. I don't remember doing that.

Q. Do you remember where you were when this statement was prepared for you to sign?

A. No. Because I don't remember it.



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March 22, 2011

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Smith

Q. Let's --

A. But I know I did it because it's my signature and this is my truths.

Q. Let's read through it point by point and I'll ask you some questions. Why don't you read it into the record starting at the first line?

A. My name is Debra Smith. I am 28 years old. I was born --

Q. Then it is blacked out. But when were you born?

A. June 3, 1956. I live at 1749 Glenmore Avenue, East Meadow, New York.

Q. Just for the record, the address on the copy that we all have has been blocked out. But that's the address you lived at in 1984?

A. Yes.

Q. Okay.

A. Because my children live there now.

Q. Okay. Keep going.

A. My home phone number is (516) 794-7127.

Q. Just for the record, the phone number



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March 22, 2011

42

1 Smith  
2 is actually blacked out on the copy we have.  
3 But was that your home phone number in  
4 December of 1984?

5 A. Yes. Yes.

6 Q. Thank you. Please continue. Just  
7 line by line.

8 A. "I work at American Technical  
9 Ceramics at 15 Stepar Place, Huntington  
10 Station, New York, phone 271-9600 extension  
11 220, as a computer programmer analyst."

12 Q. Thank you. As of December 9th of  
13 1984, did you, in fact, work at American  
14 Technical Ceramics at that address with that  
15 phone?

16 A. Yes.

17 Q. Thanks. Please keep reading.

18 A. "I live at home with my parents and  
19 brothers and sisters."

20 Q. Was that true as of December 9th of  
21 1984?

22 A. Yes. I see it only has "sister"  
23 there because only one sister lived at home.  
24 One had an apartment and the other one got  
25 married. That's why it says "sister."



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March 22, 2011

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Smith

Q. Please read the next sentence.

A. "I have been told by the detective who is writing this statement that any false statements I make herein are punishable as a class A misdemeanor pursuant to section 210.45 of the penal law of the State of New York."

Q. As you sit here today, do you recall that the detective warned you that making a false statement to the police was punishable as a misdemeanor?

A. I don't remember. But I wouldn't have anything to worry about because I was just telling them a truth that I had experienced. And I said to him, "Look, it may not be anything." As a matter of fact, it was a couple of weeks ago, I think it was. So I was telling him the truth. I didn't know if it would be significant.

Q. Sure. Okay.

Why don't you read the next line of the statement into the record starting with "I wish to state"?

A. "I wish to state last month, I believe between November 17th and the 21st, I



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DEBRA SMITH

March 22, 2011

44

1 Smith  
2 had gone to my friend James Pearson's house  
3 at" --

4 Q. Then it's blacked out.

5 A. Well, I better not give his address  
6 out.

7 Q. Why don't you read the end of that  
8 sentence?

9 A. -- "for the evening."

10 Q. Okay.

11 Where did James Pearson live back in  
12 December of '84?

13 A. He lived in East Rockaway.

14 Q. Did you know his address?

15 A. I don't think I should give his  
16 address because that would make him angry.

17 Q. Okay. I wouldn't want to do that.  
18 Who was James Pearson?

19 A. He was a guy I went out with nine  
20 years.

21 Q. So he was your boyfriend in December  
22 '84?

23 A. Right. When I told him I was going  
24 to the police because I heard something, he  
25 goes, "Debbie, it could be anything. What are



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 you talking about? Don't waste your time,  
3 their time. Don't go. You'll open up a can  
4 of worms. And, remember, you have a  
5 psychiatric background. Maybe they'll think  
6 it's something else. Don't do it, Debbie."  
7 But I said, "Yes. I think I did hear a  
8 scream."

9 And it's only -- suppose that girl,  
10 you know, needed help or something? So I went  
11 and did it anyway. That's why I know he would  
12 get mad if I gave his address.

13 Q. Fair enough. I won't ask, then.

14 Read the next sentence of the  
15 statement into the record.

16 A. "We had an argument and I left his  
17 house to go home. I started driving on  
18 Atlantic Avenue to Central Avenue. As I got  
19 to that corner, I saw that the railroad gates  
20 were down for a train that was going towards  
21 Long Beach. I decided to take Rockland Avenue  
22 street up to Merrick Road and Ocean Avenue  
23 where I go" --

24 Q. Turning to the next page.

25 A. -- "to go to Peninsula Boulevard and



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DEBRA SMITH

March 22, 2011

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Smith

home." Because I think I put that in there because that's not the way I normally go if I was late and the train was coming. So I went around it and went the back way to Rockland Avenue. That's why I'm saying I specified that in the report to the police.

Q. Okay. Please read the next sentence?

A. I drove north on Rockland Avenue to Sunrise Highway. The traffic light was red and I stopped for the light. I had my window partly open because I was smoking.

Q. Why don't you stop there, please.

Were you a smoker in December '84?

A. Yes.

Q. And did you from time to time smoke in the car?

A. Yes.

Q. When you smoked in the car, was it your habit to leave the window partly open?

A. Yes. Because I don't want all the smoke in the car.

Q. As you sit here now, do you recall having been at James Pearson's house and having had an argument with him and leaving?



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1 Smith

2 A. That's not what I remember. What I  
3 remember was we went to a dance that night.

4 Q. With James?

5 A. Yeah. And his mother. Sometimes,  
6 you know -- so his mother, James and me all  
7 went to the dance. And the reason why I'm  
8 pretty sure about that -- and I don't know  
9 why. Well, maybe right before I left Jim's  
10 house, I had an argument about something.  
11 That's possible. And I didn't think the dance  
12 was relevant to mention to them.

13 But I had high heels on. And when I  
14 was going by the trestle, I was going to climb  
15 up it. And I started to but then I was wobbly  
16 because of the heels. And it was sinking in  
17 the mud, the dirt. So I couldn't do that.  
18 That's why I didn't go up the trestle looking  
19 for what the noise was.

20 Q. We're going to get to the noise in  
21 just a minute.

22 Why don't you read the next line into  
23 the record, if you would?

24 A. "While I was sitting at the light, I  
25 heard a woman scream. I rolled my window down



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DEBRA SMITH

March 22, 2011

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Smith

and listened, but did not hear anything else. The scream came from the left and like it was up high. I looked at the railroad elevated because that seemed to be the direction that the scream came from."

Q. Thank you.

As you sit here today, do you recall being in that location and hearing a girl scream?

A. I remember that.

Q. Tell me what you remember of it.

A. I remember getting up to the light. I had the window open and I was smoking and I heard a scream. It sounded like a female voice. When I remembered it years later, I remembered also I thought I heard other noises, other sounds like more than one voice, years later. But this would be the most accurate because this was right about two, three weeks after it happened.

Q. When you say you later remembered having heard other voices and other sounds --

A. When I was asked about the story without having read this, I said that I heard



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1 Smith  
2 a scream, a female voice. And then I thought  
3 I heard, like, when I was talking to Mr.  
4 Ferguson, I told him I thought I heard more  
5 than one voice, other voices.

6 Q. The other voices you heard --

7 A. Maybe I was also very -- I only wrote  
8 down what was definitive, like I heard a  
9 definitive scream. That, I heard. I did not  
10 maybe write the other voices down because I  
11 thought that I should just write what I heard  
12 clearly, not what was muffled or mumbled, for  
13 the police because it was a statement. I had  
14 to make sure it was exactly what I did hear  
15 clearly.

16 Q. Can you describe this scream for us?  
17 What did it sound like?

18 A. Like a woman in trouble. That she  
19 did not want to -- that something was  
20 happening that she did not want. Definitely  
21 like she didn't want to be there or it was  
22 definitely sounding like a woman in trouble.  
23 That's why when the light turned from red to  
24 green, I pulled across the highway, parked my  
25 car on the side of the road and got out to



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1 Smith

2 explore. I wanted to see what was causing  
3 some girl to scream.

4 Q. What if anything did you find or hear  
5 when you got out of the car?

6 A. When I got out of the car, by the  
7 time I crossed the highway and got out of the  
8 car there was silence. I heard nothing. I  
9 heard nothing. But I was going to explore. I  
10 thought maybe she made so much noise that they  
11 had their hands over her mouth so she couldn't  
12 scream anymore. So I thought I would go up  
13 the trestle where I thought I heard the sound  
14 coming from, in that vicinity, back, back that  
15 way and see if there was anything up there.  
16 But I was a little bit nervous because I had  
17 those high heels on from the dance and I  
18 couldn't move easily.

19 Q. Were you at all afraid having heard a  
20 girl scream?

21 A. Yes. I was afraid, too. Well, I was  
22 mostly afraid when I saw how vulnerable I was  
23 with high heels on, the pumps and everything  
24 digging into the dirt, putting me off balance.  
25 I didn't have my sneakers on. I always wear



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Smith

sneakers and I didn't have my sneakers on.  
So, yeah, I was afraid. That's what  
ultimately stopped me. I said wait a minute,  
now. I'm trying to go up this trestle, I'm  
unbalanced, you know, my high heels. And what  
can I do anyway? I'm going to go up there and  
I'm going to surprise them and they're going  
to get me. I said I don't know.

Q. Now, you had mentioned a moment ago  
you thought later you might have heard other  
voices?

A. Yes. But I didn't -- I don't think I  
put that in there because that wasn't  
definitive. It was like very low talking.  
Like, very, very low where I could hardly  
catch it across the highway.

Q. Those other voices you think you may  
have heard, were they female or male voices?

A. I thought they were male.

Q. Please take a look at a map that has  
been previously marked as Exhibit 170 and I  
would like to just make sure we're very clear  
on where you were. If you look at the  
lower --



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1 Smith

2 A. North is to the top, south is to the  
3 bottom? There's no compass on here.

4 Q. There is no compass. But if you look  
5 down, you see the number 2 that is highlighted  
6 in yellow there?

7 A. Yeah.

8 Q. Do you see the hatching of the  
9 railroad line there?

10 A. Yes.

11 Q. And do you see at the intersection to  
12 the right of the two, it says "Rockland  
13 Avenue" coming up above the railroad trestle?

14 A. Yes.

15 Q. Do you see Sunrise Highway going just  
16 below and parallel with the trestle?

17 A. Sunrise Highway. Yes. I see that.

18 Q. So you testified and you wrote in  
19 your statement that you were driving up  
20 Rockland to the light at Sunrise?

21 A. I was approximately probably where  
22 the number 4 is, at the light when I heard the  
23 scream. Then when I went across Sunrise  
24 Highway -- and where it would be if you moved  
25 that 4, straight up -- I would be up the



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Smith

trestle there, opposite the 2.

Q. You know what I would ask you to do is take my pen and make a number 6 with a circle around it where you parked your car after you drove under the overpass on Rockland.

A. You know, at this time I'm not sure if I parked -- I think I parked over here.

Q. Before you make any marking, do you want to refer back to your statement again?

A. No, no, no. I know I pulled the car across the highway. What I don't remember is did I pull it across and park, like, legally on the right side of the road. There's no legal parking there, though, at that hour. So I don't remember how I got around there. I didn't want to get a ticket or get in trouble for parking illegally at that hour of the night. So I thought -- what I did was just pull to the right even though that wasn't legal parking.

Q. On the other side of the railroad tracks where you first heard this scream.

A. Right. Somewhere between the 1 and



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1 Smith

2 4. It would be the 6. It would be right  
3 about here. Does that 1 represent where the  
4 car was found?

5 Q. The 1 is not -- the 1 is something  
6 else. It's not the --

7 A. Oh, because I was going to say that I  
8 think I was parked not too far away from the  
9 car.

10 Q. I'm going to ask you questions about  
11 the car. But for now, just enter the 6 where  
12 you parked your car.

13 (Witness complies.)

14 So the 4 is where you heard the  
15 scream. But it's not where you saw a car; is  
16 that fair to say?

17 A. Yes. I didn't see the car until  
18 after I parked my car. I got out and walked  
19 towards the trestle under that underpass, over  
20 that way, looking to see if there was a girl  
21 screaming. Listening.

22 Q. Why don't we do this? See the  
23 writing on the right side next to number 4, it  
24 says "Debbie Smith's location where she  
25 reported seeing the car and hearing a scream,"



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DEBRA SMITH

March 22, 2011

55

1 Smith  
2 that's no longer accurate? You're telling us  
3 number 4 is only where you heard the scream,  
4 right?

5 A. Right. Where did you get that "she  
6 reported seeing the car" from?

7 Q. Looks like it's wrong.

8 A. It is wrong.

9 Q. So cross out the part that's wrong.  
10 Cross out where "she reported seeing the car"  
11 so that our map is accurately reflecting what  
12 you saw and what you remember.

13 A. I didn't see the car until -- I saw  
14 nothing. But I was listening. That's all I  
15 was doing at that location number 4, and  
16 hearing the screaming. That's all. I heard  
17 the scream there.

18 Q. Then you entered a 6 on the other  
19 side?

20 A. Maybe it should be further down. If  
21 that's Hot Skates, the 6 should be further  
22 down this way.

23 Q. Do you want to put an arrow where it  
24 should be, where you parked the car?

25 (Witness complies.)



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DEBRA SMITH

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Smith

Okay. Why don't you write on the right side, "6, Debbie Smith parked car"?

(Witness complies.)

MS. CORNWALL: And we'll mark this as 170-A. And I'll get copies out.

(Exhibit 170-A, a map showing markings witness made, was so marked for identification.)

MS. CORNWALL: Thank you very much.

Q. Why don't you continue reading from your statement and we'll come back to the map?

"The traffic light changed."

A. Where were we?

Oh, "and I stopped for the light. I had my window partly opened because I was smoking. While I was sitting at the light, I heard a woman scream. I rolled my window down, listened, but did not hear anything else. The scream came from the left and like it was up high. I looked at the railroad elevated because that seemed to be the direction that the scream came from. The traffic light changed and I drove across Sunrise Highway and under the railroad



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1 Smith  
2 overpass. I saw a large, light- to medium-tan  
3 car, four-door sedan, early '70s. It had huge  
4 windows. I looked inside and saw a lot of  
5 stuff in the back seat. I think there were  
6 tools, a blanket and other stuff in the back  
7 seat. During this time, I got out of my car  
8 and I looked around toward the railroad  
9 trestle."

10 Q. Why don't I stop you there?

11 Would you turn back to our map and  
12 indicate on the map where you saw this car?  
13 Did you see the car in approximately location  
14 number 6 where you parked?

15 A. Yeah. Location 6.

16 Q. Okay. Why don't you write that,  
17 also, on the right side where you just wrote  
18 "Debbie Smith parked car," why don't you add  
19 in "and saw car"?

20 (Witness complies.)

21 A. How about I write "and location where  
22 she reported seeing the car"?

23 Q. If that's accurate, go ahead.

24 (Witness complies.)

25 Great. Thank you.



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Smith

Now, I have one more map to make sure we're seeing this clearly. I gave counsel a copy. It's Exhibit 264 and this one is from Google Earth.

So it shows, from the sky, a photograph of the same general location. Do you see Rockland Avenue coming from the left?

A. Yes.

Q. Do you see the railroad tracks in the middle going from left to right, crossing Rockland, this gray band?

A. Oh, that's the railroad. Okay. I see that.

MR. FREEMAN: Objection to the form of the question.

Q. And then do you see Sunrise Highway as it was on the other map?

A. Yes.

Q. The wide street below the railroad? And you're generally familiar with this area, aren't you?

A. I drove a taxi in this neighborhood. Yes, I did.

Q. Taking a look at 264, the Google



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DEBRA SMITH

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Smith

Earth image, do you recognize the neighborhood depicted --

A. Yes.

Q. -- as part of Lynbrook?

A. Yes.

Q. Do you now recognize the gray line just above Sunrise Highway going from the left side of the page to the right as the railroad track?

A. Yes.

Q. Now, does this image give you anymore space or change at all -- withdrawn.

Does this image help you at all in determining where you parked your car and where you saw the other car after you drove through the railroad overpass?

A. No. It's the same whether I use the little map or this map. Except there's more room to write it on the big one.

Q. Thank you.

I would now like to show you something else. Well, I'm sorry. Withdrawn.

Let's go back and keep reading through your statement. Three lines from the



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Smith

bottom, I think.

"I looked"?

A. "I looked inside and saw a lot of stuff in the back seat."

That?

Q. Go ahead.

A. "I think there were tools, a blanket and other stuff in the back seat."

Q. As you sit here today, do you remember seeing that car by the side of the road?

A. Yes.

Q. As you sit here today, do you recall seeing those items inside the car?

A. Yes. I remember -- I thought I saw rope. I didn't put that down, though.

Q. Where was the rope?

A. Mixed in with all the other stuff.

Q. Do you recall what color the rope was?

A. Beige, tan. The usual color.

Q. Do you have a specific memory or are you guessing about the color?

A. No. Specific memory, it was beige.



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1 Smith

2 Q. By the way, the writing of this  
3 statement, other than your signature, is that  
4 your handwriting?

5 A. No. It's not mine. It's his.  
6 That's why I'm having trouble reading it.

7 Q. So a detective wrote this out for you  
8 to sign?

9 A. Right.

10 Q. Did you read it before you signed it?

11 A. I don't remember this statement.  
12 So -- I'm sure I did because I don't sign  
13 anything until I read it.

14 Q. And we've read about two pages of it  
15 so far. Is there anything here that, as you  
16 read it now, feels inaccurate?

17 A. The only part I was surprised, it  
18 didn't mention, was I was surprised it didn't  
19 mention the dance. Because I had high heels  
20 on, because I remember it clearly to this day.  
21 I'm surprised it didn't mention that. I must  
22 have, after the dance, got into an argument  
23 with Jimmy. That's why I put the argument in.  
24 I remember we didn't argue that much. So I  
25 was kind of surprised about that.



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1 Smith

2 Q. Other than information that might  
3 have been left out of the statement so far, is  
4 there anything that's here that's inaccurate?

5 A. I don't remember the car as being a  
6 four-door sedan. I don't remember that.

7 Q. Let's keep reading through your  
8 statement and then I'm going to show you a  
9 couple of other things.

10 You're at the third line from the  
11 bottom of the second page, I think. "I looked  
12 at the license plate." Right-hand side toward  
13 the bottom.

14 A. "I looked at the license plate. I  
15 remember there were four numbers and three  
16 letters and the shiny" -- what is that? I  
17 can't read that. "Shiny sticker on the left  
18 side of the rear bumper. I also remember that  
19 the car had a broken windshield and a ticket  
20 in the left front window on the dashboard."

21 Q. As you sit here today, do you have a  
22 specific memory of the license plate, the  
23 shiny sticker and the broken windshield or any  
24 of those things?

25 A. No. I have no recall whatsoever of



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 the broken windshield, the sticker. I have no  
3 recall.

4 Q. Okay. Please continue reading your  
5 statement.

6 A. "Today I received a phone call from  
7 Detective Joseph Volpe to ask me to come to  
8 police headquarters and view a car they have  
9 there. I met with Police Officers Lane and  
10 Detective Pierce who showed me a 1971  
11 Oldsmobile Delta 88. And I had looked at the  
12 car. I feel that this is the car I saw that  
13 night."

14 The only reservation I have is that  
15 the interior of the car does not have all the  
16 stuff in it that the car had when I was  
17 stopped by the railroad crossing. I had given  
18 this statement to the detectives, and it is  
19 the truth.

20 Q. Thank you.

21 A. I remember looking at the car.

22 Q. When you say you remember looking at  
23 the car, were you at the police department  
24 when you looked at a car?

25 A. I believe. If I recall correctly, I



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DEBRA SMITH

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1 Smith  
2 was by Franklin Avenue, the police impound  
3 area. There were a lot of other cars and  
4 things around.

5 Q. Showing you what's previously been  
6 marked as Exhibit 169. I'm showing you the  
7 first page of that exhibit.

8 Do you recognize that as the 1971  
9 Oldsmobile Delta 88 that police showed you  
10 when you went to the impound?

11 A. I have no memory of it. I just know  
12 that there was a car there that night that I  
13 thought had suspicious things in it. It  
14 didn't fit there. It wasn't supposed to  
15 legally be there, according to Lynbrook law.  
16 And, you know, I mentioned that to them.

17 Q. And --

18 A. I don't remember --

19 Q. -- Ms. Smith, when you signed this  
20 statement saying that police showed you a 1971  
21 Oldsmobile Delta, and you felt that car they  
22 showed you was the same car you had seen, was  
23 that a truthful statement?

24 A. It must have been, because I signed  
25 it. I would have protested it. And I said --



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Smith

then I made a point that the only reservation I had was the car didn't have all the stuff in it.

Q. So when you looked at the car in the impound, did you in fact recognize it as the car you had seen that night you were referring to when you heard the scream? Was that the car that you had seen?

A. I signed it here. So I would have to say yes.

Q. Showing you what was marked as Exhibit 160, take a look at that. This is a document provided to us by the Nassau County Police suggesting that two days after -- let me just finish the question and then I'll ask you.

This is a document, Exhibit 160, which Nassau County Police gave us suggesting that two days after you signed the statement identifying a car and describing the scream that you had heard, you called back at the police and said you had a question about the date when you had heard the scream. Do you recall calling the police back?



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Smith

A. Yes.

Q. What prompted you to do that?

A. Because I was thinking about the time period. I realized I had it wrong, that it wasn't the 17th to 21st time period, that it was actually the week before.

Q. And what was it that made you realize it was the week before?

A. I think I -- because I went to the dance. And all I did was ask his sister where the dance was. So whenever that dance was, was the night it happened.

Q. Do you recall where the dance was held?

A. Brooklyn.

Q. So is it fair to say that when you called back the police on December 11th of 1984, you were very confident that you had heard the scream and seen that car the weekend of November 10, not the weekend of November 17th?

A. Well, that I had -- actually, the whole thing that transpired. Heard the scream, heard -- I thought it was a Saturday



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Smith

night, around the 10th, looking at this time frame here, as opposed to the week later.

Q. And could it also have been a Friday night, given that November 10th of 1984 was --

A. It had to be either a Friday or Saturday because the dance was held on either Fridays or Saturdays.

Q. After you made this phone call, did anyone from the Nassau County Police Department come back to you and ask you to sign an amended statement?

A. I don't remember.

Q. To your knowledge and the best of your memory, after you made this phone call did any Nassau County Police Officer ever contact you again?

A. Well, I don't remember the time I signed this statement. And then --

Q. Referring to Exhibit 159, your December 9, 1984 statement.

A. Right.

And then I do remember going and looking at the car.

Q. Later the same day?



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1 Smith

2 A. I don't know if that was the same  
3 day. Maybe it was.

4 Q. Well, let's take a look at your  
5 statement of December 9th.

6 On the third page, the statement you  
7 signed says, "Today I received a phone call  
8 from detective Joseph Volpe who asked me to  
9 come to police headquarters and view a car."  
10 It's on the third page there.

11 "I met with Police Officer Lane and  
12 Pierce who showed me a 1971 Oldsmobile Delta."

13 So if you signed this statement --

14 A. That would be accurate, then.

15 Q. So you signed a statement the same  
16 day that you saw and recognized the vehicle in  
17 police impound as the same car you had seen  
18 sometime earlier.

19 Other than that -- and your phone  
20 call to police two days later -- do you recall  
21 any other contact with Nassau County Police in  
22 1984, 1985 or 1986?

23 A. No. I don't think so. I mean, I was  
24 very busy. I didn't want to be bothered. I'm  
25 telling you the best I can. Maybe I didn't



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1 Smith  
2 hear it. Maybe it was a truck driving by.  
3 Maybe it was a cat squealing in the woods over  
4 there or up by the train track. I didn't  
5 really want to be bothered.

6 Q. As you sit here today, do you really  
7 believe that you called the police about a cat  
8 screaming?

9 A. No. No. I thought it was a woman  
10 screaming.

11 Q. And that's why you called the police.

12 A. Yeah. That's why I did call them,  
13 you know. But I didn't want to be bothered.  
14 I didn't want to get involved. I didn't want  
15 to get in between something. Also, because my  
16 psychiatric background, that might raise  
17 questions to them. So I was hesitant about  
18 that too. I just did it because, you know  
19 what, in all fair consciousness, let me give  
20 them a call and whatever.

21 Q. So no Nassau County District Attorney  
22 ever asked you to talk to him about what you  
23 saw or heard that night?

24 A. I don't remember.

25 Q. You were never asked to go to court



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1 Smith

2 about this, were you?

3 A. Oh, thank God no. Could you imagine  
4 me saying all this in open court? I don't  
5 think I would like that too much.

6 I didn't ever call them back, I don't  
7 think. See, it says, "She will attempt to put  
8 her date and activities in order and will call  
9 us back."

10 Q. You're referring to Exhibit 160.

11 To the best of your memory, you did  
12 not call them back?

13 A. No. I just called -- because I was  
14 hesitant. Now I've got the dates wrong. Now  
15 I'm not sure. You know, I got my mental  
16 health history. I mean, you know.

17 Q. Sorry to interrupt you.

18 A. No.

19 Q. Did you tell either Detective Volpe  
20 or Detectives Pierce and Lane, who showed you  
21 the car and took the statement, or the  
22 detective that you spoke to two days later  
23 over the phone, that you had had a psychiatric  
24 history?

25 A. No.



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Q. Did they ask you any questions about psychiatric history?

A. No. They wouldn't know that. My boyfriend said to me, "Don't even do it. Don't call them. Don't bother with it. It's over and done. Nothing you can do about it." I said, "Suppose they can't find her?" And he said, "Don't bother with it. You've got a psychiatric history. You know how that looks."

MS. CORNWALL: I have no further questions at this point. I might after the other side questions you. Would you like to take a minute and stretch your legs?

THE WITNESS: No. I'm good.

EXAMINATION BY

MR. FREEMAN:

Q. My name is Mr. Freeman and I'm going to be asking you questions.

A. Okay.

Q. Are you sure you don't want a break before we start?

A. Positive.

Q. Good.



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Same rules apply. If you don't understand the question, you can ask me to repeat it and I'll repeat it hopefully in a way you can understand. If you want to take a break, even though you don't want one now, you may want to take a break later, feel free, let us know. I'm sure we could get some water. Would you like water?

A. Only water they have is a water fountain.

Q. There's a cooler right there?

MR. FERGUSON: I can get some downstairs if you want it.

THE WITNESS: It's okay.

Q. Anyway let me know. Okay?

A. All right.

Q. In no special order, I'm going to go through the questions that you were asked by Ms. Cornwall and some questions that we have.

You were asked a number of questions about your statement that you signed. Do you recall that?

A. Yes.

Q. You said that you read the statement



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1 Smith  
2 before you signed it because that's what you  
3 usually do. Is that right?

4 A. Yes. I don't specifically remember  
5 sitting there and signing this document. I  
6 said that is my signature and I did sign it.  
7 But I do not sign anything unless I read it.

8 Q. I'm going to ask you to look at the  
9 statement again. Why don't you look at your  
10 copy which is 159. Do you see it?

11 A. Yes.

12 Q. Do you see that this statement has a  
13 couple of spots where your initials appear?

14 A. Yes. That's probably because I  
15 erased something, changed something and I  
16 initialed it to show that I had done that.

17 Q. And to your mind, does that make you  
18 recall that you did read it before you signed  
19 it?

20 A. I must have.

21 Q. Let's turn to the third page, please.  
22 In the middle, there's a sentence which reads,  
23 "I met with Police Officer Lane and Detective  
24 Pierce who showed me a 1971 Oldsmobile Delta  
25 88 and I have looked at the car."



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1 Smith

2 Do you see that?

3 A. Yes.

4 Q. I'm going to be asking you questions  
5 about the next sentence. "I feel that this is  
6 the car I saw that night."

7 Now, you seem to be a pretty careful  
8 person. When you wrote "I feel that this is  
9 the car" --

10 MS. CORNWALL: Objection.

11 Sorry. I'll wait until you're  
12 finished.

13 Q. "I feel this is the car I saw that  
14 night." Did you indicate or did you mean to  
15 indicate that you weren't certain that you  
16 felt it was the car?

17 MS. CORNWALL: Objection. Ms. Smith  
18 did not write. She testified earlier that the  
19 detectives wrote.

20 A. The detectives did write that.

21 Q. Okay. Do you recall using the words  
22 "I feel"?

23 My mistake. I said that the wrong  
24 way.

25 A. I know what you're saying.



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MS. CORNWALL: Well, objection. The witness has --

A. I thought it was the car upon viewing it. But I wrote -- I told him the only reservation I have is that that night it looked so grungy, and all the stuff in the back of the car, and it looked like a workman's car. It looked like a worker's car.

Q. In fact, it looked like a handyman's car, isn't that right?

A. Right. A handyman's car. That's what I meant.

Q. Did you express reservations to the police officer or the detective that took your statement that this might not be the car?

A. I don't remember. It's a possibility.

When I thought back --

Q. Are you finished --

A. When I thought back on it, like, now, 27 years later, I thought the car was lighter than that car. I thought it was a lighter car. When I look at that car, I don't remember that car, picture of this specific



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Smith

car. If that's the car, if that's the Delta.

Q. But you indicated earlier today in your testimony that the statement that you gave in 1984 -- December 9, 1984 to be exact -- in your opinion, is accurate and truthful. Do you remember saying that?

A. Right. Because I knew how serious this was. So I wouldn't -- I wouldn't have stretched it. I would have shown -- any reservation I had, I described that reservation. Because this car, the car I'm looking at, looked pretty nice, cleaned up. The car I saw that night looked like junk all stuck in there, rope, tools. Just a whole bunch of junk in there. And it was very sloppy.

But, yes. I gave the statement. I knew there was also a misdemeanor to lie on the report. So I would have been -- tried to be very accurate.

Q. So if I understand you correctly -- let me know if this is a fair statement, the statement I'm going to make -- because you were trying to be accurate, you indicated to



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1 Smith  
2 the person that took this statement that you  
3 had some reservation whether or not the car  
4 that they showed you was the car you saw the  
5 night you heard the scream?

6 MS. CORNWALL: Objection.

7 Q. Correct?

8 A. But he's specifying that's what the  
9 reservation was all about. Because it was  
10 cleaned up and now it looked -- didn't look  
11 all junked up. I thought to myself if they  
12 have it in the police pound, why isn't it all  
13 junked up the way I saw it that night?

14 Q. So I'm going to ask my question  
15 again.

16 Is it a fair statement for me to say  
17 that you expressed your reservation about the  
18 car and whether it was the same car you saw  
19 the night of the scream because you wanted to  
20 be accurate? Is that a fair statement that  
21 I'm making?

22 A. Yes. Yes. I wanted to make sure --  
23 I'm not a car person. You know, I don't know  
24 cars too well. I wanted to make sure that I  
25 did not identify the wrong car or tell them



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1 Smith  
2 what my reservation is. Yeah, this car looks  
3 neat, clean. My car was dirty, filthy and  
4 grungy. It looked different.

5 Q. You testified here today, as I  
6 indicated earlier, that the statement that you  
7 gave in 1984 in December, you intended it to  
8 be accurate. But you said also that you have  
9 some recollection still today about the  
10 incident; do you recall that testimony?

11 A. Yeah.

12 Q. For example, you said, "I remember  
13 the rope." Do you remember saying that here  
14 today?

15 A. Yeah.

16 Q. Do you recall that -- do you recall,  
17 as you sit here today, that the car that you  
18 saw the night of the scream was a station  
19 wagon?

20 A. Knowing what I thought about it 27  
21 years later, I thought it was a station wagon.  
22 But I wouldn't have signed about a Delta 88 if  
23 that wasn't true. You know what I mean? I  
24 mean, that's how I'm looking at it. In  
25 hindsight, I thought it was a beige-ish,



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1 Smith  
2 tannish station wagon. Because most repairmen  
3 have station wagons, things in it. I thought  
4 that was my impression of it. But here,  
5 according to the statement I signed, the Delta  
6 88. I know what that Delta 88 looks like  
7 because Jimmy's mother had a Delta 88.

8 Q. Jimmy meaning James Pearson, your  
9 boyfriend at that time?

10 A. Yes. His mother had an old model  
11 Delta 88.

12 Q. Didn't you growing up have a station  
13 wagon in your family?

14 A. Yes.

15 Q. And was that a car that was familiar  
16 to you?

17 A. Yes. The Vista Cruiser, Oldsmobile.

18 Q. The station wagon that you had when  
19 you were growing up, when you were younger,  
20 did it have a door that opened up in the back  
21 the way most station wagons do, like a tail  
22 that goes down, tailgate?

23 A. I don't think the Vista Cruiser went  
24 down. I think it opened up this way  
25 (indicating).



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Q. So as you look back, as you put it, 27 years later, you think -- when you think about the incident today, you think it might -- that the car you saw that night, the night of the scream, might have been a station wagon, however, you want to -- you believe that the statement you gave --

A. Was accurate.

Q. -- was accurate at the time you gave it; correct?

A. Yes. But 27 years, to remember something like the make of a car, I mean, to even remember all the incident and everything, when so many things happen in the course of a month, let alone...

Q. When you looked -- withdrawn.

Do you recall whether you gave the statement -- the one that you gave on December 9, 1984 -- do you recall whether you gave it after you looked at the car that the police were going to show you?

A. After the car.

Q. And do you believe that the viewing of the car may have affected your memory and



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1 Smith  
2 you put in the make and model of the car  
3 because you had just seen a car in police  
4 custody?

5 A. I didn't give the make and model of  
6 the car. The car they showed me, asked me my  
7 opinion of, I thought it was the car. They  
8 then put in the make and model and everything  
9 of the car. I didn't know.

10 Q. I see.

11 A. I didn't give them a make and model  
12 of a car. I said "a car." I just -- a  
13 woman's explanation of a car, you know.

14 Q. Okay. Now, you testified that, the  
15 night of the scream, that you heard what you  
16 believed to be a scream; correct?

17 A. Yes.

18 Q. And there were some questions asked  
19 about your ability to describe that scream;  
20 correct?

21 A. It wasn't blood curdling. But it  
22 was -- definitely sounded like a scream that  
23 got muffled with a hand.

24 Q. In other words, it is your  
25 interpretation of the events that there might



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Smith

have been a hand over the person's mouth.

A. After they started the scream.

Q. I see.

Do you know if -- what words were used?

Let me rephrase that. That's a bad question.

Do you recall if the person said "help" or was it just a scream, like -- I'm going to scream.

(Mr. Freeman is screaming.)

A. It was --

(The witness is screaming.)

Q. Is that your best recollection of how it sounded to you?

A. Yeah. Like that.

Q. Are you demonstrating for the record what the scream sounded like?

A. Yes.

Q. You also said that you heard what could have been muffled voices?

A. This was my recall years later -- years later. I remember hearing almost, like, the person was chastising, like a person would



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1 Smith  
2 be chastising the one who screamed. All of a  
3 sudden, you don't hear anymore screaming. But  
4 you hear some other sounds. But because it  
5 was not clear, I did not put it in the report.  
6 Because that was something that was too  
7 muffled. Maybe it was my interpretation. I  
8 don't know. I didn't want to take any chance.  
9 So I put what I clearly heard, what I clearly  
10 saw, what I clearly knew. Because it's a  
11 misdemeanor thing.

12 Q. So my question is, as you sit here  
13 today, is this a recollection that you had at  
14 the time of the event -- withdrawn.

15 It's an experience that you had at  
16 the time of the event, in other words, hearing  
17 muffled voices at that time, but you didn't  
18 tell the detective because you weren't  
19 certain; is that right?

20 A. Yes.

21 Q. This is not something that you  
22 thought of --

23 A. Because, don't forget now, I'm across  
24 a highway.

25 Q. -- years later?



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A. There wasn't that much traffic at that hour of the night. I'm across the highway and your mind could play tricks on you. You're not a hundred percent sure. You think you hear. That's why I pulled over. I thought I may have heard. Let me go and see if maybe I can help this lovers quarrel out, or whatever. You know. But I can't say I clearly heard it and that's clearly what I knew.

Q. Okay. You drove a taxi in Lynbrook; correct?

A. Yes.

Q. On and off for sometime around?

A. Yes. From '78, around.

Q. Until '89?

A. No. Until about '82, '83. Maybe '84. I may have only driven one night a week around, like, in the '80s, one night a week. Like a Saturday or Friday night.

Q. But you're familiar with the area around Rockland and Sunrise Highway?

A. Yes. Very familiar with that.

Q. And you're also familiar with train



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Smith

tracks and the trestles; correct?

A. Well, I never went up to the train tracks or trestle there.

Q. I mean their location and their existence.

A. Yeah.

Q. You testified today that you didn't want to wait for a train to go pass. Do you recall testifying --

A. Yes.

Q. -- that the bars were down?

A. Right. That was in my letter -- my statement.

Q. And I'm asking you if you recall -- having been a taxi driver, having dated James Pearson for some time -- in your experience, how long does it take for a train to go by?

A. Not that long. Trains go by pretty quickly.

Q. The train tracks that you're talking about are Long Island Rail Road train tracks, right?

A. Yeah.

Q. It's not a freight train.



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A. No, it's Long Island Rail Road.

Q. And it's Saturday night or Friday night. Would it be a long train, in your experience?

A. No. But you know what? I like to try and get home without stopping at lights, stop signs. I go the way with the least amount of lights, least amount of stop signs. I usually don't go that way home that I went down Rockland Avenue. But the train was coming, I wanted to avoid it. So I scooted down Rockland, avoided it.

Q. Do you recall if the train --

A. You know, we're not talking about Sunrise Highway.

Q. Do you recall if the train was going east or west?

MS. CORNWALL: Objection. Or north or south.

Q. Let me start by saying do you know whether the Long Island Rail Road goes north-south or east-west?

A. It's travel north-south at that location over by East Rockaway. You have



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Smith

Sunrise Highway railroad that goes east-west. Then you have it where it comes off somewhere by, maybe Valley Stream, I'm not sure where, and comes down that way.

MS. CORNWALL: I'm a little confused. For the record, you're referring to where she says she was at Central?

THE WITNESS: Central Avenue. Yeah.

MR. FREEMAN: Do you have the other map as well? I have it here.

THE WITNESS: I don't think you have it on here.

Q. Do you want to look at -- either map?

A. No. We're not talking about this east-west Sunrise Highway. We're talking about the one that cuts down Central Avenue. Oh, here it is. Here is the train. There it is. See?

MS. CORNWALL: Just for clarity of the record, I ask that Debbie make a number 7 at the intersection where she stopped where the gates were down and write that on the exhibit on the map.

THE WITNESS: I'm not sure I did on



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 Central Avenue or what. I'm sure I scooted  
3 around somewhere. Probably Central Avenue.  
4 Did I say Central Avenue in there?

5 MS. CORNWALL: It's the bottom of  
6 page 1 of the statement.

7 Q. Let me ask you this. I think earlier  
8 you indicated that the train tracks were  
9 visible on 170. I'm going to ask you to look  
10 at 170 again, which is this map, and see if  
11 you see some indication of where the train  
12 tracks are.

13 A. On this map. Where do you see  
14 Rockland Avenue on here? I can't find it  
15 right now.

16 Q. Look at the bottom of the map. I  
17 would rather not point to you.

18 Look at the bottom of the map and see  
19 if you see it.

20 A. Here is Sunrise Highway, Lincoln.  
21 Here is Rockland. There it is. All right.  
22 We're not talking about this train track that  
23 I went around at all, you know.

24 Q. Actually, I'm asking you is there an  
25 indication on that map of train tracks?



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DEBRA SMITH

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Smith

A. Right here. These little crosshatches.

Q. Are those the train tracks?

A. Those are the train tracks where I was waiting at the light.

Q. Would you use a yellow marker to indicate on 170 where the train tracks are?

(Witness complies.)

MS. CORNWALL: Just for clarity of the record, Lou, this line of questioning pertains to the tracks, you're asking about the tracks where Debbie stopped and heard the sound and then drove through the underpass and saw the car?

MR. FREEMAN: Yes. The answer is yes to that.

THE WITNESS: These are the tracks.

MS. CORNWALL: As opposed to the tracks earlier on in the statement where the gate was down by Rockland and Center.

THE WITNESS: That was East Rockaway. That's what I went around to avoid that intersection. That's when I got onto Rockland Avenue and I was on Rockland Avenue by East



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DEBRA SMITH

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Smith

Rockaway. And I traveled -- here is Rockland Avenue. See this? And here is Central Avenue. See this? This is another set of train tracks. Just going from my boyfriend's house, these are the trains at East Rockaway. See them? I was coming from his house over here, let's say, and went and saw the train was coming and I looked up and down Rockland Avenue, which is here, and I went up to Rockland Avenue and that's where I stopped at a red light on Sunrise Highway. See the train tracks there?

Q. Thank you.

A. So I stopped at that red light and that's where I heard the scream.

Q. Is it your testimony that there are also train tracks indicated on this map, and if so, would you mark those train tracks in yellow as well.

A. Mark them, too?

Q. Yes, please.

A. Where I went around the light?

Q. I'm not sure it's on the map but --

A. It's here. See the crosshatch?



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DEBRA SMITH

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1 Smith

2 Little crosshatch? My boyfriend's house is  
3 here in East Rockaway, let's say.

4 Q. Below the map?

5 A. Right. Now I'm heading north. I  
6 have to pass these tracks. If I see a train  
7 is going to come, I'll quick jump onto  
8 Rockland Avenue here, get onto Rockland Avenue  
9 as fast as I can. Then I took Rockland Avenue  
10 all the way up out of East Rockaway into  
11 Lynbrook. And then, now, this is the Babylon  
12 line of the Long Island Rail Road -- did you  
13 ever hear of Babylon?

14 Q. Yes, I have.

15 A. That goes through Lynbrook, Freeport.

16 Q. So is it also true that on Exhibit  
17 264, one can see the intersection where you  
18 stopped, Rockland Avenue --

19 A. And Sunrise Highway. Yes. Here is  
20 Rockland Avenue. Here is Rockland Avenue and  
21 the 27 equals Sunrise Highway. 27 is Sunrise  
22 Highway. Here, see Rockland?

23 Don't forget, I'm stopped. This  
24 brown mark here, that's the Long Island Rail  
25 Road.



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DEBRA SMITH

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1 Smith

2 So I'm stopped over on Rockland  
3 Avenue right -- I'm on the south side of  
4 Sunrise Highway. Here. That's where I hear  
5 the sound.

6 Q. Could you use this marker to put your  
7 location?

8 A. On which one?

9 Q. Use this one. 264.

10 A. All right.

11 Here is Rockland and Sunrise and I'm  
12 on the south side of Sunrise Highway. This is  
13 East Rockaway section, then it becomes  
14 Lynbrook here. Here is that Hot Skates where  
15 I think the girl worked.

16 Q. Could you please put a circle around  
17 the area you marked with the highlighter, use  
18 that pen, if you will, so we can tell?  
19 Because the marker didn't make as much color  
20 as I had hoped.

21 (Witness complies.)

22 THE WITNESS: See how you see 27?  
23 Sunrise. Rockland.

24 Q. Okay. So I'm going to focus you on  
25 being stopped at the light. All right.



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DEBRA SMITH

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1 Smith

2 So you're stopped at the light on  
3 Rockland heading north?

4 A. Heading north.

5 Q. You stopped at the light.

6 A. Right.

7 Q. You say you have the window down  
8 because you are smoking a cigarette?

9 A. Bad vice.

10 Q. Right. So you say at that vantage  
11 point, you heard the scream before -- while  
12 you were still south of Sunrise Highway on  
13 Rockland; am I right?

14 A. Yes.

15 Q. Now, is the train line elevated at  
16 that point?

17 A. It is above. If you go under it,  
18 it's above you. It is elevated.

19 Q. And is there -- I think people have  
20 referred to that area as having a trestle?

21 A. Yes. I call it a trestle.

22 Q. Define trestle.

23 A. Trestle is the structure of, like, a  
24 bridge that belongs to a railroad that they  
25 use to go over streets.



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1 Smith

2 Q. And other than the trestle area where  
3 you can drive under the overpass, is it fair  
4 to say that there's -- that the Long Island  
5 Rail Road is on a hill?

6 A. Yes.

7 Q. Would you guess or estimate -- I  
8 didn't mean the word guess -- would you  
9 estimate -- sorry -- how high off the ground  
10 that is? If you know?

11 MS. CORNWALL: Sorry. The hill or  
12 the track?

13 Q. The hill. Or the track. How high  
14 the track is.

15 A. Above you? If you're on the ground  
16 below, track's got to be high enough for  
17 tractor trailers, trucks, buses to go under it  
18 and all kinds of traffic. So what would that  
19 be? 15 feet, 20 feet?

20 Q. Thank you. And do you recall how far  
21 the hill is from the south side to the north  
22 side? In other words, there's dirt  
23 supporting --

24 A. Three lanes of traffic. Sunrise,  
25 three lanes on one side, three lanes of



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DEBRA SMITH

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1 Smith  
2 traffic on the other side and trestle comes  
3 right there.

4 Q. Okay. You read my mind.

5 So you have three lanes, plus three  
6 lanes. Six lanes of traffic before you get to  
7 the beginning of the structure that holds the  
8 tracks, keeps the tracks 15 or 20 feet up in  
9 the air; correct?

10 A. Right.

11 Q. And then there is dirt or a hill.  
12 And I'm asking you from the south side to the  
13 north side, how much space is there?

14 A. You mean like the sidewalk would be?

15 Q. Yes.

16 A. Got to be at least ten feet.

17 MS. CORNWALL: Objection. Calls for  
18 speculation.

19 MR. FREEMAN: If she knows.

20 A. No. It's got to be more. It's got  
21 to be a car length. Well, think. Sunrise  
22 Highway to the overpass. Do you know this  
23 area that we're talking about? It's got to be  
24 at least a car length. 20 feet.

25 Q. So what you're saying, now that we've



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DEBRA SMITH

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Smith

gone over the numbers -- by the way, do you know the approximate distance from the light to the other side of Sunrise Highway? In other words, how many feet six lanes is the equivalent of?

MS. CORNWALL: Objection.

A. I don't know how many six lanes is the equivalent of. Maybe 60 to 80 feet.

MS. CORNWALL: Objection. At this point the witness is guessing.

THE WITNESS: You know what I'm guessing? I'm saying if you take a car length, you go across the highway.

MS. CORNWALL: It's something we could measure.

Q. Well, you may answer, if you know.

A. I don't know definitively. But I would guess it's got to be at least 80 feet.

Q. Not only did you use that road or you used it from time to time, but you also drove a cab in that area; correct?

A. Yes.

Q. And so spatially or distance wise, you're indicating that you heard a scream from



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Smith

approximately 90 feet; correct?

MS. CORNWALL: Objection.

A. Yeah. But I have a story behind that.

Q. We'll get to that.

A. I can hear better than you can, or could.

Q. Is that what you're saying, that you heard a scream?

A. Yes. Yes.

Q. I'm going to ask you the next question. And that is, to your recollection was the scream coming from the north side or was it coming from the south side as you were facing the trestle?

A. I'm facing the trestle, which means I'm looking towards the north and the scream was coming from the north to -- slightly to my left or slightly to the west. Northwest is where it was coming from.

Q. So on the far side of the trestle.

A. Right.

Q. And now I'm going to ask you where the car was that you saw when you went past



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DEBRA SMITH

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1 Smith  
2 the light under the trestle?

3 A. Right to the right there.

4 Q. How many --

5 A. Or to the east.

6 Q. Okay. How long did it take you, if  
7 you can recall, to get from the spot where you  
8 were stopped at the light to where you saw the  
9 car?

10 Do you understand the question?

11 A. Well, do you mean how long was I  
12 waiting for that light to change? Time period  
13 there?

14 Q. I'm going to ask you to  
15 incorporate --

16 A. The whole shebang?

17 Q. Yes.

18 A. It was a very long light. Rockland  
19 Avenue is a small intersection. I was there a  
20 while.

21 Q. What's a while to you? Does that  
22 mean one minute, five minutes?

23 A. At least three minutes to four.

24 Q. So it's your testimony that you were  
25 at the light three or four minutes and then



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1 Smith  
2 you went through the intersection under the  
3 trestle; correct?

4 A. And pulled my car to the right.

5 Q. You pulled your car to the right.  
6 Did you park -- or stop, I should say -- stop  
7 your car behind the car that we're talking  
8 about?

9 A. That car was up more. Mine was north  
10 of it. North.

11 Q. Okay. Now, you didn't stop because  
12 of the car. If I understand, you stopped --

13 A. I stopped because of the scream.

14 Q. And, as you said, earlier you wanted  
15 to explore?

16 A. I wanted to investigate. I thought  
17 some boys were giving a girl a hard time. And  
18 I wanted to find out if I could help her. I  
19 just thought: You know what? Who do they  
20 think they are? And I just...

21 Q. And I think you testified that you  
22 were afraid or a little scared?

23 A. I had reservations. I was definitely  
24 afraid.

25 Q. But that wasn't going to stop you?



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DEBRA SMITH

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1 Smith

2 A. Oh, what stopped me were those high  
3 heels of mine.

4 Q. We'll get to that in a minute.

5 A. That stopped me.

6 Q. I understand you have been given a  
7 commendation for helping out during what I  
8 believe to be -- you'll correct me if I'm  
9 wrong -- an accident or some other occasion  
10 where you helped someone in distress while you  
11 were driving a taxi cab; is that right?

12 A. Yes. In Hempstead.

13 Q. Was that before or after this  
14 incident?

15 A. Before.

16 Q. Tell me about the incident. Because  
17 apparently you are willing to --

18 A. Take a chance.

19 Q. -- take a chance. Yes.

20 A. Well, what would you do?

21 Q. I'm asking you to tell us.

22 A. I was turning in my taxi cab in  
23 Hempstead. I turned it in. Even though I  
24 drive in Lynbrook and it has Lynbrook Cab on  
25 it, I bring it to the main depot in Hempstead



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DEBRA SMITH

March 22, 2011

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Smith

where you get gasoline, check the car out and all that. I was almost there when I saw this little old man being beat up by three gang boys, three guys beating on this one defenseless man. Well, I had to stop. I stopped my car, I jumped out. And right away, they stopped shaking him down and beating him up. And I guess one of them was getting ready to come at me when I saw out of the corner of my eye a cop car passing the intersection. So I jumped out in the intersection screaming for help because it was a cop. The cop came along, he caught the guys. And that's what I did.

But it was one older man. A man, maybe 70 years old being beat up by three 20-year-olds. I mean, who wouldn't stop?

Q. Glad you did.

A. Yeah.

Q. Now, let's go back to this incident.

A. I would do the same thing.

Q. You said that -- earlier you said that you would explain why your hearing is better than the average person's hearing?



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DEBRA SMITH

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1 Smith

2 A. Yes, it is.

3 Q. Would you tell us how that's so?

4 A. I went for a complete physical over  
5 on -- that hospital on Merrick Road and --  
6 what is it? Oceanside Hospital? That's  
7 Merrick Road? One of the hospitals right over  
8 there. And it was for a complete physical.

9 I'm going for the hearing portion of  
10 the test. So I keep on -- I look at the  
11 woman. I keep raising my hands, whatever she  
12 tells me, you know. Right hand this sound,  
13 that sound. She keeps doing the same sounds  
14 over and over. I said to her, "Look, you just  
15 did four times the same exact sound over and  
16 over again. Why are you doing that?" She  
17 goes, "Because I can't believe what I'm  
18 seeing. I can't believe what you're hearing."  
19 She goes, "Do you understand that you can hear  
20 better than a dog can?"

21 I said, "What?"

22 She said, "Human beings can't hear that."

23 Q. When was that examination, how  
24 recently?

25 A. It was '79. '79.



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DEBRA SMITH

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1 Smith

2 Q. I see. Before this incident?

3 A. It was before the incident. A long  
4 time ago.

5 So she said to me, "How did you get  
6 such good hearing? I'm shocked." So she was  
7 amazed that I could hear what I could hear.  
8 That's why I also knew that I had extra  
9 special hearing, good hearing, that most human  
10 beings can't hear what I hear. That's why I  
11 only picked the one sound, the loudest yell.  
12 Because they would then believe what I could  
13 hear, you know what I mean? Because it was so  
14 far away.

15 Q. I understand your testimony that, to  
16 your knowledge, you have hearing that's better  
17 than the average person.

18 A. Yes.

19 Q. Could you tell us how you knew that  
20 the scream that you heard was coming from a  
21 particular direction or a particular place?

22 A. Well, if I'm to understand it, I  
23 might not have had that right. I, for some  
24 reason, thought it was coming up. Like,  
25 because from the distance it was, I thought it



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 was coming from up on the trestle. But if I'm  
3 to understand it -- and I just read it today  
4 in the article -- the girl was found  
5 underneath somewhere by the little forest or  
6 woods there. So maybe I didn't hear right.  
7 You know what I mean? I thought it sounded  
8 like it was coming up and to the west.

9 All I know, it was coming west and it  
10 seemed up. I might have been wrong about  
11 that. That's why I was going up to the  
12 trestle to look and see. Maybe I should have  
13 walked along those woods there and looked and  
14 looked and looked. That's what I should have  
15 done, just taken a walk along the woods. But  
16 I was afraid to get in trouble with the police  
17 because my car was parked where it was not  
18 legally parked.

19 Q. How long did you leave your car  
20 unattended, if you recall?

21 A. I was mostly -- you could see it from  
22 where I was. Because I started to walk up  
23 that trestle, up that little hill.

24 Q. And it's your testimony -- and you  
25 seem to be clear about this -- that the night



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 that you heard the scream was the same night  
3 as the dance; correct?

4 A. Yes.

5 Q. And that you were wearing high heels  
6 because you had been to the dance?

7 A. Right.

8 Q. And that the dances usually took  
9 place on a Friday or a Saturday?

10 A. Right.

11 Q. And you went with James Pearson?

12 A. Right.

13 Q. And I think you said you went with  
14 his mother?

15 A. Right. Mom went, too, because her  
16 daughter is performing.

17 Q. When you say daughter is performing,  
18 what do you mean?

19 A. These are folkdances, Swedish or  
20 Finnish folkdance.

21 Q. Is it a dance that is observed by an  
22 audience or --

23 A. Yes.

24 Q. -- something that you partake in?

25 A. Both. First part of the show we



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DEBRA SMITH

March 22, 2011

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Smith

observe the folk dancers dancing. And Mrs. Pearson's daughter was a folk dancer. So she would want to go with Jimmy and me to the dance. After that, they had dancing and food and whatever.

Q. How many times, if you recall, did you go to such an event?

A. I went to them two, three times a year. So I've been to -- I've been to at least ten of them.

Q. And do you know whether this particular -- do you know if they were more than one Swedish or Finnish folkdance that time of the year?

Do you understand my question?

In other words, are they every week or spaced out?

A. No, no. They're special. They're special. Lucia, the Lucia is one dance. It's spaced out. One every three, four months maybe. Usually for something special like the Lucia. Like James Pearson's sister was Lucia one year. Dressed in all white, pure, virginal type of costume.



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DEBRA SMITH

March 22, 2011

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1 Smith

2 Q. So getting back to your exploration  
3 in heels. How far -- were you trying to go  
4 up?

5 A. I was trying to go up that little  
6 hill that's towards the trestle. I wanted to  
7 go up there and see if I could see anything  
8 down the tracks or see if I could see anything  
9 on the side of the -- there. And --

10 Q. How far up were you able to get?

11 A. I went halfway up. And then my heels  
12 were, like, digging into the dirt, soft dirt.  
13 So my heels were digging in. And I was all  
14 off kilter. I was afraid to fall and hurt  
15 myself. I was going by the tracks. I didn't  
16 know how it looks up there. I don't know how  
17 close they are to the trestle I'm climbing.  
18 It's a little dangerous to do that.

19 And then I said what if somebody is  
20 having a fight with their boyfriend and I come  
21 along and they toss me onto the tracks?

22 Well, I do these things.

23 Q. So you've actually had a number of  
24 adventures, right? I mean, aside from this.  
25 I think you just made a reference of a fact



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DEBRA SMITH

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1 Smith

2 that -- withdrawn.

3 You said, "I do these things," right?

4 A. Well, you know, if I think it's  
5 something -- one time I'm driving along and  
6 this car in front of me hit this little boy or  
7 barely hit him. They were making a big deal.  
8 It was in Hempstead. A whole gang of blacks  
9 ready to attack this little old man driving  
10 his car.

11 So I come along and I pull up behind  
12 him and I get out of the car. And I said,  
13 "Well, come on. We have to get this kid to  
14 the ambulance." You know? I said, "He's  
15 alive. It's okay." But they wanted to kill  
16 the guy who accidentally hit the kid. So I  
17 tried to, like, stop it. You know what I  
18 mean? And I did.

19 Q. So you're willing to take risks when  
20 the situation requires?

21 A. Yeah. I guess.

22 Q. Have you ever taken risks -- did you  
23 take a risk by going on the Achille Lauro? Or  
24 maybe you didn't know something was going to  
25 happen?



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2 A. No. I didn't know anything was going  
3 to happen. I was told by the Italian ship  
4 liners, "Do not take this ship because it is  
5 not a union ship. It is not a union ship.  
6 They get in trouble, hijacked, all kinds of  
7 problems. Don't take it."

8 But here I was. I'm traveling alone.  
9 I want to get to Greece. So I said: I'm not  
10 going to let this stop me. I'm sure I won't  
11 get a bad ship.

12 So I went to the un-union ships,  
13 signed up for the Achilles Lauro and I went on  
14 it. That was just because I wanted to go.  
15 And I knew that the Italian ships wouldn't be  
16 going for days and days and days. I just  
17 wanted to go.

18 Q. You testified that you were in Europe  
19 for approximately two months?

20 A. Yeah.

21 Q. And you --

22 A. Alone.

23 Q. -- gave a long list of countries,  
24 including Afghanistan, Iran?

25 A. Yeah. That happened after the



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2 Achilles Lauro. I ended up in the Middle  
3 East.

4 Q. I'm trying to figure out if you were  
5 able to visit all of those countries in that  
6 two-month period.

7 A. Oh, yeah. Because I have a Euro  
8 Pass. So when I'm going -- say I'm in  
9 Portugal. Because when I was in Portugal, I  
10 got mugged and I wanted to get out. So they  
11 had the super trains. And in ten hours, you  
12 would be all the way to Germany.

13 One day I'm in Portugal. Ten hours  
14 later, I'm in Germany. And I used to do it,  
15 hook up all those trains I took, I took at  
16 night with sleeping time. So I slept on the  
17 train and then I went to the next country  
18 while I was sleeping. And I managed to  
19 optimize my time. I made it so every moment  
20 counted, even sleeping. I was traveling en  
21 route.

22 Q. Did you use the Euro Pass to get to  
23 Afghanistan?

24 A. No. You're not allowed to. No.  
25 Euro Passes are only allowed to be used in



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2 Europe. Any country in Europe, anywhere, any  
3 bus, any train. Any -- all those things you  
4 can take with Euro Pass. Cruises, you can  
5 take the Euro Pass. But not Afghanistan,  
6 India, all those other areas.

7 But I had \$10,000 on me. Can you  
8 imagine if they knew I was walking around with  
9 \$10,000 on me?

10 Q. Did you go to Afghanistan?

11 A. Yes.

12 Q. How long did you stay there?

13 A. Oh, no. I was just on my way through  
14 there.

15 Q. On your way to?

16 A. I was heading north to get back on  
17 track. I was trying to go to a major city  
18 where I could take transportation back to  
19 Europe.

20 Q. What major city were you heading  
21 towards?

22 MS. CORNWALL: Objection. I think  
23 this is no longer a relevant line of  
24 questioning to the purpose of why this witness  
25 is testifying.



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2 Q. You may answer.

3 A. At that point, I didn't know my  
4 Middle Eastern traffic that well. So I just  
5 kept telling people that I want to go to a  
6 major city. But I didn't know the language.  
7 And they did speak English, some of them. But  
8 I don't recall at this point in time.

9 Q. Did there come a time when you flew  
10 on a jet -- I mean, a fighter jet? Not a  
11 passenger plane. A fighter jet?

12 A. Yes, I did.

13 Q. Could you tell us the situation that  
14 allowed that at that happen?

15 MS. CORNWALL: Objection.  
16 Irrelevant.

17 Q. You may answer.

18 A. I was in Iran and I was -- when I was  
19 in Iraq, they said that somehow friends were  
20 captured over in Iran. So they asked if I  
21 would go over to help facilitate him getting  
22 out there. I agreed to. I went to Iran, it  
23 was in a cave type of area with a bunch of  
24 Iranian, I guess, military, if you call them  
25 that. And the blood started flying.



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DEBRA SMITH

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25

Smith

I accidentally touched the Iranian leaders' guy there and blood started flying. So I had to get out of there as quick as I could. And I ran out of the cave, blood was flying. They started to kill the guys in the cave.

I ran across the tundra, I call it, it's that kind of earth. I ran across the tundra and there was, I think, an Iraqi plane. I don't know who it was. But he landed his plane because he was talking to the guys running in behind me. And as soon as they got him, they pulled him out and attacked him. So his plane was standing there empty. And I had taken flying lessons. So hopped in the plane and took off with it.

Q. So this would be, again, during the two-month period that you were in Europe?

A. In '85. Yeah.

Q. Let's talk about '84 for a minute. I certainly appreciate your candor and willingness to talk about your life openly the way you do.

In May '84, you were hospitalized;



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correct?

A. Right.

Q. I think you said you were in the hospital for about seven days?

A. A short period of time, yes.

Q. If I understand your testimony correctly, when you were in the hospital you're medicated?

A. Right.

Q. And when you leave the hospital you're told to stay on medication; correct?

A. Yes.

Q. And, at least at that time in your life, meaning in '84, '85, '86, you aren't always --

A. Compliant.

Q. -- following doctor's orders to stay on medication; is that right?

A. Correct.

Q. When you didn't take your medication was there a time period that you can tell us about that would -- let me rephrase the question.

In other words, if you didn't take



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1 Smith  
2 your medication, could you last six months  
3 without an episode, a year, year and a half?

4 A. Usually about a year and a half.

5 Q. So I think you understand my  
6 question. You could go without taking  
7 medication for a certain amount of time and  
8 then if you didn't take your medication, you  
9 would have an episode; is that fair statement?

10 A. Not exactly. It depends on my  
11 lifestyle.

12 What I did basically, and most of my  
13 life was that -- before I had the kids -- was  
14 that I worked three jobs and also would go to  
15 school. Now, that would be school part-time  
16 probably.

17 But when I was working school -- when  
18 I was going to school full-time, I was working  
19 two full-time jobs. So here I have three  
20 full-time jobs. So basically some people  
21 thought that I overdid it. That going to  
22 school full-time and working two full-time  
23 jobs or working a full-time and two, three  
24 part-time jobs was too much. For anybody.  
25 Who do you know that ever worked two



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DEBRA SMITH

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1 Smith  
2 full-times jobs going to Hofstra University  
3 with 17 credits, computer science. Not an  
4 easy major, but a tough major, computer  
5 science. So I would burn out.

6 Also, I worked nights. A person like  
7 me can't work nighttime hours like midnight to  
8 6 a.m. I used to drive a cab from 5 p.m. to 5  
9 a.m. all through the night.

10 Also, another thing is I worked the  
11 post office. I worked for the federal post  
12 office all night long, 11:00 to, like, 7:00,  
13 8:00 in the morning. Then I went to school.  
14 Then I went to two other part-time jobs.

15 So I'm doing all this work that you  
16 burn out.

17 Q. Let me ask you this question. Do you  
18 think that holding two or three jobs and going  
19 to school, that is it fair to say that your  
20 energy level is very high?

21 A. Oh, I'm dying. The whole way through  
22 I'm dying of fatigue and exhaustion trying to  
23 do that. I did it years at a time. But I was  
24 dying.

25 Q. Had you ever heard the phrase --



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1 Smith

2 A. Manic.

3 Q. -- manic?

4 Were you manic at certain times when  
5 you didn't take your medication?

6 A. Yes. I would say so.

7 Q. And, by the way, could you look at  
8 158, this document? I'm going to ask you --  
9 do you need a copy or you have it?

10 MS. CORNWALL: I have it.

11 Q. I'm going to ask you if you recall  
12 approximately what time -- you don't have to  
13 look at it yet. You can look at it or not.  
14 It's up to you.

15 Do you recall the first time you  
16 called the police what time it was?

17 A. I think it was in between my jobs or  
18 something. I think it was late. I don't  
19 think it was early.

20 Q. Well, depends on how you define early  
21 and late. I don't know what you mean.

22 A. I don't really remember. But I  
23 remember it not being -- I don't know. It was  
24 not 9 to 5, I think. I don't remember  
25 exactly. When was it?



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1 Smith

2 Q. I don't know. I'm going to ask you.

3 I'm going to ask you to look at this  
4 document, 158. I'm going to ask you to look  
5 at the upper left-hand corner --

6 A. Oh, it's late. Between 21:00 and --

7 Q. No. Look higher.

8 MS. CORNWALL: Objection.

9 Foundation, what the document is and whether  
10 it refreshes.

11 MR. FREEMAN: I'm going to ask her.

12 Q. I'm going to ask you to look at a  
13 document and see if it refreshes your  
14 recollection. It's 158. And I'm going to ask  
15 you if the document refreshes your  
16 recollection as to the time that you called in  
17 to the police for the first time.

18 A. Oh, my God. I must have been driving  
19 the taxi. Look what time. Is that the time?  
20 4:25? That's a.m., isn't it?

21 Q. I'm asking if it refreshes your  
22 recollection. Not whether it's true or not.

23 A. Sure. Reading this will refresh my  
24 recollection. Excuse me. Refresh my  
25 recollection. Excuse me.



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1 Smith

2 MS. CORNWALL: You might want to  
3 define that.

4 MR. FREEMAN: Define what?

5 MS. CORNWALL: "Refreshing  
6 recollection" in a sense of does it bring back  
7 a memory.

8 MR. FREEMAN: I'll be happy to do  
9 that.

10 Q. Does looking at the document, any  
11 part of it, bring back a memory as to what  
12 time you called the police for the first time?

13 A. I thought I called at a strange time  
14 of the day. I thought I called very early.

15 Q. Would 4 a.m. be very early?

16 A. Yeah.

17 Q. Is that what you mean by very early?

18 A. Yeah.

19 Q. Okay. I'm just asking.

20 A. I thought I called, like, at a  
21 strange time. But it was probably because --  
22 you know why I might have called? Because I  
23 remember seeing it and I thought I was driving  
24 my Lynbrook Taxi at that point.

25 Q. Seeing what? You said "seeing it."



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1 Smith

2 A. Seeing the poster that has the phone  
3 number on it. The poster of the missing Fuchs  
4 (phonetic), whatever -- Fusco?

5 Q. Correct.

6 A. And I said, "Oh, my God. I might  
7 have heard something." And said I should call  
8 as soon as I could. It was the middle of the  
9 night. But I was up, I was working.

10 Q. Even if you weren't working driving a  
11 cab, would you be -- if you were in a manic  
12 stage would you have trouble sleeping?

13 A. No. No. I love my sleep. Do you  
14 know that I sleep -- this is a terrible thing  
15 to confess to -- but I sleep ten hours every  
16 night medicated or not medicated. And when I  
17 have to be sleep deprived, I crack like a nut.  
18 Literally.

19 Q. Do you know -- or can you help us  
20 with this question?

21 A. Go ahead.

22 Q. In November of 1984 --

23 A. Right.

24 Q. -- you were working at Ceramic; you  
25 testified to that, correct? In November '84



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DEBRA SMITH

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1 Smith  
2 you've already testified that you were working  
3 at Ceramic?

4 A. All I remember, what I was  
5 definitively doing in '84, I know I had three  
6 jobs because I remember saying to some people  
7 on the trip, well, look, I begged them to  
8 sleep for a year of working. I know a  
9 computer program analyst, that was 8 to 4 --  
10 what day was this? On the 9th, was it a  
11 weekend?

12 Q. I'm asking you at the moment,  
13 generally in November of '84 --

14 A. I cleaned boats and cars --

15 Q. Go ahead.

16 A. -- part-time after work during the  
17 week. And I did something on the weekends. I  
18 can't remember what it was.

19 Q. Was it cleaning houses?

20 A. No. It wasn't cleaning houses or  
21 boats.

22 Q. Was it driving a taxi?

23 A. I thought, if I would have guessed, I  
24 thought I did one day a week on Saturdays from  
25 5 to 5.



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1 Smith

2 Q. 5 p.m. to 5 a.m.; correct? Is that  
3 what you mean?

4 A. Right. 5 p.m. to 5 a.m.

5 Q. Can you be any more certain as to  
6 what you were doing in November of '84?  
7 You've just told us --

8 A. I can't be sure. Oh, I was going to  
9 school part-time for accounting.

10 Q. So in other words, even though you  
11 had graduated from Hofstra in May of '83, you  
12 were going to school for another subject?

13 A. Why. Because a program -- it has to  
14 be a mass of two things. You have to know  
15 programming, computers. But you have to know  
16 a subject matter. Accounting is an  
17 application that's often -- I was programming  
18 at that time. I was programming accounts  
19 payable. So I needed to know accounting in  
20 order to program it correctly. How can I  
21 program something I don't know?

22 Q. So to the best of your recollection,  
23 in November you worked for American Ceramics  
24 as a computer programmer. You also were going  
25 to school for accounting. You were also



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DEBRA SMITH

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1 Smith  
2 cleaning boats. You were also cleaning houses  
3 and you believe you were driving a cab;  
4 correct? Some or all of those.

5 A. All of them. Only one I'm not sure  
6 about was the cab bit. But if I did, I was  
7 driving it Saturday 5 to 5. 5 p.m. to 5 a.m.  
8 That's the only way I can explain calling at  
9 that strange hour.

10 Q. Did you ever work driving a cab on  
11 Friday nights?

12 A. Yes.

13 Q. During November.

14 MS. CORNWALL: If you recall.

15 Q. If you recall.

16 A. Yeah, I did. But I can't say it was  
17 November. I have worked Friday and Saturday  
18 night.

19 Q. If you had a plan with your boyfriend  
20 to go to a dance in Brooklyn, would you have  
21 to make special arrangements to get off of  
22 work?

23 A. I would have to ask to get off.

24 Q. Now, remind me. In November of '84  
25 your children weren't born yet; correct?



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A. No. My oldest is 1989.

Q. And in 1989, you testified, that once you had your first child, you didn't work full-time anymore?

A. I never worked full-time anymore. No. That's it.

Q. Raising children is a big responsibility; correct?

A. Yes. It takes a lot of time. Even to this day, I still drive my children to school, to work, to all over the place.

Q. Have you and your children ever lived in the same house full time?

A. In Brooklyn.

Q. When was that?

A. 1989 to 1997 when Paul died.

Q. Is that your husband?

A. Yes.

Q. And subsequent to that, have your children lived in the same house with you?

A. No. I can't live with my father. I need my own space. My father, he has custody of them. I mean, I go there every day, cook, clean, do everything I have to do every day.



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1 Smith

2 But, no. They don't live in my apartment.

3 Q. Is that because of a court order or  
4 is that voluntary?

5 A. My personal opinion on it? Is my  
6 father didn't have any money for his golden  
7 years. So he wanted the checks for the kids.  
8 And so he went to court and fought custody and  
9 he won. I lost custody of my kids.

10 Q. Do you recall the basis for his  
11 petition?

12 MS. CORNWALL: Objection. Family  
13 proceedings are, I believe, private and  
14 privileged in New York State. So it's your  
15 choice of whether you choose to answer that or  
16 not.

17 THE WITNESS: It's all right.

18 A. No. I don't remember. All I  
19 remember is we had a custody battle and he won  
20 custody. Because of my psychiatric  
21 background. Which, as you can see, hampers  
22 and gets in the way very frequently.

23 Q. Getting back to Sunrise Highway and  
24 Rockland, did you --

25 MR. FERGUSON: At an appropriate time



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DEBRA SMITH

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1 Smith

2 I need to take a recess. I just need to use  
3 the restroom.

4 MR. FREEMAN: Let's do it now, then.  
5 (Recess taken.)

6 Q. Before today's deposition, did you  
7 meet with somebody by the name of Mary?

8 A. Yes.

9 Q. Who is Mary? What is her role in  
10 this case, if you know?

11 A. Mary is a private detective for  
12 Restivo, I believe, Kogut and the other  
13 fellow.

14 Q. And how many times did you meet with  
15 her?

16 A. Once.

17 Q. Where was that?

18 A. In my apartment.

19 Q. And how long did that meeting take?

20 A. About two hours.

21 Q. Was anybody else present?

22 A. No.

23 Q. Did Mary write, take notes while she  
24 was talking to you?

25 A. Yes.



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1 Smith

2 Q. Did she sign -- sorry. Did she ask  
3 you to sign a statement?

4 A. No.

5 Q. Did you meet with the attorney for  
6 the plaintiffs, Ms. Cornwall, before today?

7 A. Not that I think -- I don't know. I  
8 don't think so.

9 Q. Let's talk to the same --

10 A. No.

11 Q. I'm talking about the woman sitting  
12 here, the blond sitting across from you. Did  
13 you ever meet her before today?

14 A. I don't think so.

15 Q. When you talked to Mary, did you talk  
16 about the case?

17 A. That's all we talked about.

18 Q. Did she talk about the facts of the  
19 case?

20 A. She mentioned -- no. I don't  
21 think -- me might have mentioned a few things  
22 that were on the map, type of thing.

23 Q. Did she talk about whether she  
24 believed the three men that you've just named,  
25 whether she believed them to be innocent or



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1 Smith

2 not?

3 A. She believed them to be innocent. I  
4 said to her I wasn't so sure. I said to her,  
5 "Why would the D.A. go through all the trouble  
6 of prosecuting them?"

7 Q. And did she -- I think you said you  
8 talked about the map; correct?

9 A. Well, things about the map. Like the  
10 car, that type of thing that were on the map,  
11 those numbers on the map.

12 She didn't have that map, though.  
13 She didn't produce it. She just spoke about  
14 the car, where it was, where my car was. That  
15 type of thing.

16 Q. When was this meeting? Do you  
17 recall?

18 A. I was home. I heard the doorbell  
19 ring. I opened the door. "Oh, hello. Who  
20 are you?"

21 Q. Would this be five years ago, one  
22 year ago?

23 A. Oh, this is this year. Last month,  
24 month and a half.

25 Q. So you were surprised?



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DEBRA SMITH

March 22, 2011

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1 Smith

2 A. Very -- shocked. I almost bawled  
3 over.

4 Q. Well, you had met with Mr. Ferguson;  
5 correct?

6 A. Yes.

7 Q. Was Mr. Ferguson before Mary or  
8 after?

9 A. Mr. Ferguson was first, then Mary.  
10 Then Mr. Ferguson again.

11 Q. So you've had a lot of visitors  
12 lately?

13 A. I didn't want anymore. I said,  
14 "Look, we're talking about a long time ago.  
15 You expect me to remember 27 years ago?" I  
16 had trouble getting the dates straight three  
17 weeks after the fact. If you think about it,  
18 I didn't want to be bothered with it.

19 Q. You just made reference to the fact  
20 that you didn't have the dates straight three  
21 weeks after the incident involving the scream;  
22 correct?

23 A. Yeah. Because I'm looking at this,  
24 the date the lead was received. I didn't call  
25 until December 9th. That's when I saw the



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 poster. I didn't see the poster before then.

3 I thought there might be some, you  
4 know, something to it. So I decided to call  
5 them.

6 But look at that. That's one month  
7 after everything started happening.

8 Q. When you first met with the  
9 detectives, you told them that you thought  
10 that the incident -- your hearing the scream  
11 incident -- might have been between the 17th  
12 and the 20th of November. Do you have those  
13 dates right?

14 A. "Called and stated that between 11/17  
15 and 11/20 she was driving over Sunrise to  
16 Rockland."

17 But don't forget. What time? It was  
18 4:00 in the morning.

19 Q. What does that mean to you?

20 A. Meaning, I'm ready to go to bed and  
21 I'm tired. Meaning I must have been driving  
22 the taxi.

23 What's 129? I was up because I was  
24 doing some kind of work. I had to be doing  
25 something.



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DEBRA SMITH

March 22, 2011

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Smith

Q. Are you suggesting that if you were up and you were tired, you might not have been as accurate about facts as you would have been if you had just gotten up from a ten-hour sleep? Is that what you're saying?

A. It depends on my schedule, what I was doing before that. Did I have a class that day? Did I work full-time as a programmer? Did I work full-time as a taxi driver that night?

That's bedtime. I'm supposed to be going home and going to bed.

Q. So I'm asking you --

A. What does it mean?

Q. Yes.

A. I think after a good night's sleep, a good ten-hour's sleep, everybody is a lot more fresher and alert than they are after a 15-, 16-, 20-hour day.

Q. On 160 -- I think you might have that in front of you here -- on 160, you called in and you said that you had called the command bus. Do you know what a command bus is?

A. Yes. A bus they put on the scene of



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1 Smith

2 the accident or scene of a crime that they  
3 collect information from.

4 Q. Do you recall seeing a command bus in  
5 this case?

6 A. No.

7 Q. Does this refresh your recollection?

8 A. I did call -- I know I called back  
9 when I said: No, I've got the date wrong. It  
10 was the week before and I called them up to  
11 tell them that.

12 Q. Do you recall what made you call and  
13 say that you got the date wrong? Was there a  
14 triggering event?

15 A. Because I think somebody might have  
16 mentioned to me it's a misdemeanor if I make a  
17 false statement or lie. So that, to me, was:  
18 Oh, my gosh. It wasn't that week. It was the  
19 week of the dance, the 10th, 11th or 12th. So  
20 I knew I had the date wrong.

21 Q. Was it --

22 A. Because I called on the spur of the  
23 moment when I saw I was over by -- I think I  
24 was over by Lynbrook Taxi. I saw the poster,  
25 I saw that it said about the missing girl. I



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1 Smith  
2 said: I better call right away. So I called  
3 then and there. That's why I called at such a  
4 strange hour.

5 I remember, whatever I was doing I  
6 stopped and said: Wait a minute. I better  
7 call right now even if it's a strange hour.

8 Q. Do you recall your testimony earlier  
9 that your boyfriend Mr. Pearson told you not  
10 to call?

11 A. Yeah. Of course, he didn't want me  
12 to call. "Debbie what are you going to do  
13 about it? It's too late now. Nothing to do  
14 with you. It's a month ago. Who can even  
15 remember?"

16 Q. But my question was, was he telling  
17 you not to call and then you called or did you  
18 call on the spur of the moment before you had  
19 a chance to talk to him? That's my question.

20 A. I'm not sure. At that hour, I would  
21 not have called him because he would be in bed  
22 sleeping. So I wouldn't have called him.

23 So I might have called on the spur of  
24 the moment that I have to call and get this  
25 over with.



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DEBRA SMITH

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1 Smith

2 Q. I'm asking you if you called -- I'm  
3 asking you directly if you called the command  
4 bus on December 11, 1984 because you had read  
5 newspaper articles about the case?

6 A. No. I didn't read anything about the  
7 case. As a matter of fact, the first time I  
8 saw any article was the article you showed me.

9 MS. CORNWALL: Exhibit 263 that I  
10 showed you at the beginning of the deposition.

11 A. Yes. That one. The only thing I saw  
12 was that poster about the missing girl.

13 Q. Do you read the papers regularly? I  
14 know you're busy.

15 A. Newsday. Yes.

16 Q. Were you reading it in November of  
17 1984, if you recall?

18 A. I may have. May have. But if I'm  
19 really busy, I don't go into the back of it.  
20 I just read the first five or six pages.  
21 Maybe glance at the back sports page and move  
22 on.

23 Q. We've already gone over this. But  
24 you say that you remember seeing a rope in the  
25 vehicle that you saw at the corner of Rockland



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DEBRA SMITH

March 22, 2011

135

1 Smith

2 and Sunrise?

3 A. All kinds of tools.

4 Q. But do you specifically remember a  
5 rope?

6 A. Yeah, I did.

7 Q. But I think you've indicated already  
8 that it's not in your statement; correct?

9 A. No. It's not in my statement.

10 Q. Do you recall --

11 A. I just put that in with tools.

12 Q. Okay. Are you testifying today that  
13 there should have been a rope because there  
14 were tools or are you testifying that you  
15 recall seeing a rope?

16 A. I believe recalled seeing one.

17 Q. Do you recall seeing jeans?

18 A. I don't recall.

19 Q. Do you know what I mean?

20 A. Blue jeans, denim.

21 Q. In the car?

22 A. I don't recall seeing that.

23 Q. Do you recall getting out of your car  
24 and peering into the window of the car that  
25 you saw at Rockland and Sunrise?



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DEBRA SMITH

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Smith

A. I was -- first of all, I got out of the car because I was investigating the scream. I was going all over the place. I wasn't just going after that car. As a matter of fact, that was hindsight.

First I heard the scream. Pulled my car over, I parked. I got out of my car, walked by the trestle, was walking up the trestle because I thought the sound came from that direction, realized I could not make it because of my high heels. I was not able to climb up there. Also, realizing it was dangerous, I don't have sneakers. And the reason why I'm so bold is I'm a martial artist. I'm very good at jujitsu.

And I just headed back down the trestle. And now I said: Wait a minute. Now, let's see if there's anything around here. And then I started looking around, the general vicinity of things and into the car, I looked and peered in the car and I saw everything that was in the car.

Q. Now, this was still nighttime, correct?



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Smith

A. Excuse me?

Q. It is still nighttime?

A. This is nighttime.

Q. Somewhere around 1 or 2 in the morning; correct? I don't mean to put words in your mouth. What time was it?

A. You know what? I'm not sure. I remember it being late. 1:00.

Q. But it was dark?

A. Well, you know --

Q. I'm not talking about the lights yet.

A. The trestle area is lit up.

Q. I'm saying the sky was dark, it was nighttime?

A. Yes. Yes, it's night.

Q. Did you need a flashlight to look into the car?

A. No. Because it's in an area that's pretty not that dark. There are lights there. I remember it being -- I could see anything inside the car.

Q. That night you didn't report the fact that you heard the scream or saw the car; correct?



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1 Smith

2 A. If I reported every time I heard a  
3 scream or heard a noise or heard something, I  
4 would be carted off to the hospital, mental  
5 case number 101, into the hospital. Are you  
6 kidding? I've got a mental health background.  
7 That's like a death sentence hanging over my  
8 head. That's why my boyfriend didn't want me  
9 to call. He said, "Debbie, don't bother with  
10 it."

11 Q. You said just a moment ago that  
12 you're good or an expert -- I'm not sure what  
13 you said -- jujitsu?

14 A. Not an expert. Good at jujitsu.

15 Q. Where did you learn that?

16 A. At the Silent Flute.

17 Q. Is that the name of --

18 A. It's the name of dojo.

19 Q. Were you ever an Intelligence  
20 officer?

21 A. I was not an Intelligence officer.  
22 In 1980 I took the test -- not 1980. In 1977,  
23 March of 1977 I took the military test. Like  
24 an idiot, I signed all the forms they told me  
25 to sign. And they had said I got such high



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DEBRA SMITH

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1 Smith  
2 scores on everything that I could pick  
3 whatever expertise I wanted. I said, "What  
4 would you pick?" He said Intelligence.

5 So I picked military Intelligence  
6 army, designation and coding decoding. Okay.  
7 But like a fool, I just signed. Sign, sign.  
8 I didn't realize I signed myself into the  
9 military.

10 Well, I was actually AWOL because I  
11 didn't go in when I was supposed to. And  
12 that's all my Intelligence career, went down  
13 the drain.

14 Q. I may have been mistaken. So you  
15 didn't learn jujitsu --

16 A. No. I learned jujitsu on my own.

17 Q. Did you actually -- even though you  
18 didn't join the Intelligence division of the  
19 United States CIA or whatever --

20 A. Right. Military Intelligence.

21 Q. -- did you do work for the  
22 Intelligence agency?

23 A. On the books, no.

24 Q. I'm talking about off the books.

25 A. No. I never worked for the



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DEBRA SMITH

March 22, 2011

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1 Smith

2 government.

3 Q. Did you work for somebody else  
4 besides the government as an Intelligence  
5 agent?

6 A. No.

7 Q. Were you ever shot down in a  
8 helicopter?

9 A. Was I shot down in a helicopter?

10 Q. Yes.

11 A. No.

12 Q. When you were flying a jet in Iraq,  
13 did that have anything to do with the  
14 Intelligence --

15 A. No. It was out of Iran.

16 Q. I'm sorry if I misspoke.

17 A. It was out of Iran. It came over to  
18 the U.S.A., North America where I landed it.  
19 I was very lucky they did not shoot me down.  
20 I landed it in the desert with the help of the  
21 American military. They're the ones that  
22 needed my help because I did not have enough  
23 expertise in flying that particular bird. I  
24 only took private lessons in little things.

25 Q. I'm sorry if I'm confused.



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DEBRA SMITH

March 22, 2011

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Smith

A. I did not do that for the government. I did that as matter of survival. I took the plane to the United States Government and they happened to tell me that they didn't know that plane could do what I had done with it.

Q. Let me see if I understand.

You drove it -- flew it, excuse me -- by yourself?

A. Yes.

Q. From Iran?

A. Yes.

Q. To Nevada?

A. Yes. U.S.A.

Q. Nonstop?

A. Yes.

Q. Not for some military agency?

A. No.

Q. On your own?

A. Yes. Whereupon, the American government kept it.

Q. And also kept what you had done secret?

A. No. There was a diplomatic problem in the Middle East and they sent me back to



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Smith

the Middle East in one of their fighter jets.  
He flew his fighter jet with me in the back.

Q. Who is he?

A. An American military pilot. Or might  
have been an Israeli. I don't know what  
culture he is. I didn't ask him. I assumed  
he was American. He told me the government is  
keeping the plane.

Q. How long did it take to fly from Iran  
to Nevada and Nevada back?

A. Oh, my God. We were traveling almost  
the speed of light. It was robbing Mach 4.  
You know how fast you move?

Q. I don't. That's why I'm asking.

A. Since I was a passenger, I'll say, in  
the fighter jet, from that fighter jet back to  
the Middle East, I did it in about 15 minutes,  
20 minutes.

Q. And without refueling; correct?

A. No. Probably didn't need to. We  
didn't have to refuel.

Q. We don't have to go into that much  
more detail about that, especially if it makes  
you uncomfortable.



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Smith

But was it in connection with those flights and the work that you did, helping a diplomatic crisis, that you met the President of the United States?

A. No. I didn't meet the President.

Q. You never met -- you have not met any of the presidents of the United States?

A. Not as presidents, no.

Q. Did you meet George Bush when he was not in office?

A. He was director of the CIA.

Q. And that's --

A. That's when I met him. But he wasn't President at the time.

Q. That's Senior?

A. Yes. Senior.

Q. What year was that?

A. That was 1976. August.

Q. Where was that?

A. August '76.

Q. Physically where were you when you met him?

A. The Holiday Inn lounge across from Kings Point where I worked. That's Sunnyside



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DEBRA SMITH

March 22, 2011

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1 Smith

2 Boulevard, Plainview.

3 Q. Did this meeting have anything to do  
4 with the diplomatic crisis and the flying of  
5 the jets that we just spoke about?

6 A. Well, yes it did in a sense. Because  
7 he told me that he wanted his fighter jet  
8 back. The American government lost a very  
9 valuable jet because it was connected with the  
10 Space Program or something. And he wanted to  
11 get it back and he thought my friends would  
12 know how to tell him to get it back.

13 And then -- I assumed that the stolen  
14 fighter jet that I took out of Iran, I had  
15 acquired the one that George Bush was missing.

16 I thought I did a big favor. He got  
17 back for free. No expense to the government,  
18 the tax payers, no trouble. Crazy Debbie is  
19 flying it back. You know, I think I did him a  
20 big favor. I think he owes me one, personally  
21 speaking.

22 MS. CORNWALL: Do you have any more  
23 questions?

24 MR. FREEMAN: I don't think so.  
25 Anything else? Just give us a minute. We may



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DEBRA SMITH

March 22, 2011

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1 Smith

2 need some cleanup.

3 (Brief recess taken.)

4 BY MR. FREEMAN:

5 Q. Just a couple of questions, Ms.  
6 Smith. I understand that, in addition to  
7 hearing a scream, that you believed that you  
8 also may have heard the sound of a shovel. Is  
9 that right?

10 A. Oh, yes. Now I remember that.

11 Q. You remember?

12 A. Yes. That creepy sound of the  
13 shovel.

14 Q. Getting back to your conversation  
15 with Mary Schembri, the investigator. You say  
16 that you haven't read much about this case in  
17 the newspapers or anyplace else, right?

18 A. No, I haven't.

19 Q. Did Ms. Schembri tell you where the  
20 body was found?

21 A. She said it was found underneath a  
22 bunch of those pallets, I think.

23 Q. And did she say where in relation to  
24 your testimony, where in relation to where you  
25 say you heard the scream, the body was found?



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DEBRA SMITH

March 22, 2011

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1 Smith

2 A. Not so much the scream. But she  
3 mentioned that it was not far from Rockland  
4 and Sunrise on the north side of the highway.

5 Q. And did she tell you about the  
6 condition of the body when it was found?

7 A. No. Not that.

8 Q. Did she tell you anything with  
9 respect to DNA evidence?

10 A. No.

11 Q. Did you know about Hot Skates? I  
12 know you mentioned it?

13 A. I know it's a skating rink right  
14 there.

15 Q. But did you know it at the time? In  
16 other words, in 1984 did you know what Hot  
17 Skates was?

18 A. Oh, yeah.

19 Q. Did you talk about Hot Skates with  
20 the investigator? Did she mention Hot Skates  
21 during her talk with you?

22 A. I think she mentioned that Theresa  
23 was working at Hot Skates and leaving Hot  
24 Skates walking home.

25 Q. Is that where you learned it from,



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DEBRA SMITH

March 22, 2011

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1 Smith  
2 from your conversation with Mary Schembri?

3 A. Yes. Yes. Just, you know, a month  
4 and a half ago, two months ago.

5 MR. FREEMAN: I have nothing further.

6 MS. CORNWALL: Nor do I.

7 Thanks so much for coming in.

8 THE WITNESS: You're welcome.

9 (Time noted: 1:25 p.m.)  
10  
11

12 \_\_\_\_\_  
DEBRA SMITH

13  
14 Subscribed and sworn to before me  
15 This \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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DEBRA SMITH

March 22, 2011

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C E R T I F I C A T I O N

I, HELGA CHRISTIANE LAVAN, a  
Shorthand Reporter and notary public, within  
and for the State of New York, do hereby  
certify:

That DEBRA SMITH, the witness  
whose examination is hereinbefore set forth,  
was first duly sworn by me, and that  
transcript of said testimony is a true record  
of the testimony given by said witness.

I further certify that I am not  
related to any of the parties to this action  
by blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have  
hereunto set my hand this            day of  
, 20\_\_.

\_\_\_\_\_  
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5 Case Caption: Restivo v. Nassau County  
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8 I declare under penalty of perjury that I have  
9 read the entire transcript of my Deposition taken in the  
10 captioned matter or the same has been read to me, and the  
11 same is true and accurate, save and except for changes  
12 and/or corrections, if any, as indicated by me on the  
13 DEPOSITION ERRATA SHEET hereof, with the understanding  
14 that I offer these changes as if still under oath.  
15

16 Signed on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
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